

WASHINGTON COUNTY
PUBLIC SCHOOLS

v.

████████████████████,

PARENT,

ON BEHALF OF

████████████████████,

STUDENT

BEFORE KRISTIN E. BLUMER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS

OAH No.: MSDE-WASH-OT-24-11232

DECISION

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ORDER

STATEMENT OF THE CASE

On March 20, 2024, ██████████ (Parent) requested Independent Educational Evaluations (IEEs)¹ of her child, ██████████. (Student). On April 25, 2024, the Washington County Public Schools (WCPS) filed a Due Process Complaint (WCPS Complaint) with the Office of Administrative Hearings (OAH), requesting a hearing to show that its educational evaluations of the Student were appropriate and that the Parent did not have a right to IEEs at public expense under the Individuals with Disabilities Education Act (IDEA).²

¹ The Parent amended this request on March 27, 2024 and supplemented that request on March 29, 2024.

² 20 U.S.C.A. § 1415(f)(1)(A) (2017).

On May 21, 2024, I conducted a remote pre-hearing conference (Conference) with the parties using the Webex videoconferencing platform (Webex). Brooke H. Gomulka, Esquire, participated on behalf of the WCPS, accompanied by [REDACTED], the WPCS representative. The Parent participated on behalf of the Student and herself.

At the Conference, the parties and I discussed the timeframe for issuing this decision. I advised the parties of the federal forty-five-day timeline for issuing a decision:

The public agency must ensure that not later than 45 days after the expiration of the [30-day resolution] period under § 300.510(b), or the adjusted [resolution] time periods described in § 300.510(c)—

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.^[3]

As indicated, the forty-five-day timeline ordinarily begins to run at the end of a thirty-day resolution period triggered by the filing of a due process complaint.⁴

In this case, there was no resolution period as contemplated in 34 C.F.R. section 300.510(b) and (c).⁵ Accordingly, under the regulatory timeline, the decision in this case normally would be due on Friday, June 7, 2024, which is forty-five days after the WCPS filed the WCPS Complaint.⁶ However, the regulations authorize me to grant a specific extension of time at the request of either party.⁷ In this case, the parties jointly requested an extension.

At the Conference on May 21, 2024, the parties advised that they expected to be able to provide each other with their proposed exhibits by Friday, May 24, 2024; therefore, in conformance with the five-day disclosure rule, we discussed the possibility of scheduling the

³ 34 C.F.R. § 300.515(a).

⁴ *Id.* § 300.510(b)(2).

⁵ *See also* Code of Maryland Regulations (COMAR) 13A.05.01.15C(11)(d)(iii).

⁶ 34 C.F.R. § 300.515(a). Forty-five days after April 25, 2024 is Sunday, June 9, 2024. Pursuant to OAH policy, a decision in a special education case that is due on a weekend or a holiday must be issued on the preceding business day to be timely filed.

⁷ *Id.* § 300.515(c).

hearing to begin on Tuesday, June 4, 2024.⁸ I noted that I was not available on June 4, 6, or 11, 2024, due to specially assigned dockets at the OAH. Counsel for the WCPS indicated that she was not available on Friday, June 7, 2024, as she was scheduled to be on military leave that day. The Parent indicated that she was not available on Tuesday, June 18, 2024, as she was scheduled to appear in a court proceeding that day. Wednesday, June 19, 2024, was the Juneteenth state and federal holiday.

Based on the parties' representations at the Conference of the duration of time they expected to present their respective cases and in order to account for time to hear arguments on pre-hearing motions, opening statements, and closing arguments, I found it appropriate to schedule this case for seven days. After discussions, the first mutually available day to start the merits hearing was Wednesday, June 5, 2024, continuing on June 10, 12, 13, 14, 17, and 20, 2024, beginning at 9:00 a.m. each day. I granted the parties' joint request that the hearing be conducted remotely.

As noted above, the parties jointly requested an extension and further requested that I issue my decision thirty days after the conclusion of the hearing. I found good cause to grant the request based on the document disclosure timing and the scheduling conflicts as noted by the parties and myself.

I held the hearing on June 5⁹ and June 10, 2024, beginning at 9:00 a.m. each day. Ms. Gomulka represented the WCPS. The Parent represented herself and the Student. After the hearing concluded on June 10, 2024, I cancelled the remaining hearing dates and advised the parties that I would issue a decision in this case within thirty days, by Wednesday, July 10, 2024.

⁸ Monday, May 27, 2024 was the Memorial Day holiday, and was, therefore, not included as a business day in the calculation.

⁹ At the outset of the hearing on June 5, 2024, counsel for the WCPS orally withdrew the Motion to Exclude Testimony that the WCPS filed on May 24, 2024, as the issue raised in the motion was moot at that time.

On June 5, 2024, before the hearing commenced, the Parent filed a Due Process Complaint (Parent Complaint) with the OAH, alleging that the WCPS has failed to comply with the IDEA and provide the Student with a free appropriate public education dating back to November 2017 for various reasons, including but not limited to, the evaluations at issue in the WCPS Complaint. On June 5, 2024, the Parent, concurrent with the filing of the Parent Complaint, requested in writing that I consolidate the WCPS Complaint and the Parent Complaint. The Parent reiterated the request at the outset of the hearing.

The WCPS objected to the Parent's request for consolidation. After hearing arguments from the parties on June 5, 2024, I denied the Parent's consolidation request on the record. On June 10, 2024, the Parent renewed her consolidation request during the proceedings; I again denied it on the record.¹⁰

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH.¹¹

ISSUES

1. Did the WCPS conduct appropriate assessments of the Student under the IDEA as follows:
 - a. functional behavioral assessment – February 17, 2023
 - b. occupational therapy – February 23, 2023
 - c. speech/language assessment – March to April, 2023
 - d. educational assessments – April 11 and April 24, 2023
 - e. psychological evaluation – April 17, 2023

¹⁰ The OAH assigned a case number of MSDE-WASH-OT-24-14969 to the Parent Complaint and assigned that case to a different administrative law judge to be heard separately from this case.

¹¹ Educ. § 8-413(e)(1) (Supp. 2023); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

2. If not, should the WCPS be required to pay for IEEs of the Student at public expense?

SUMMARY OF THE EVIDENCE

I admitted the following exhibits jointly offered by the parties:

- Jt. Ex. 1: WCPS Notice of the Individualized Education Program (IEP) Team Decision, Prior Written Notice (PWN), Addendum to IEP, meeting date February 7, 2023
- Jt. Ex. 2: WCPS Meeting Minutes, meeting date February 7, 2023
- Jt. Ex. 3: WCPS Notice and Consent for Assessments, December 6, 2022
- Jt. Ex. 4: WCPS Notice and Consent for Assessments, signed February 15, 2023
- Jt. Ex. 5: WCPS Occupational Therapy Re-Evaluation, assessment date February 23, 2023
- Jt. Ex. 6: WCPS Psychological Evaluation, assessment date April 17, 2023
- Jt. Ex. 7: WCPS Speech/Language Assessment, assessment on various dates in March and April, 2023
- Jt. Ex. 8: WCPS Functional Behavioral Assessment (FBA), assessment date February 17, 2023
- Jt. Ex. 9: WCPS Educational Assessment, Comprehensive Test of Phonological Processing Second Edition (CTOPP-2), assessment date April 24, 2023
- Jt. Ex. 10: WCPS Educational Assessment, Weschler Individual Achievement Test, fourth edition (WIAT-IV), assessment date April 11, 2023
- Jt. Ex. 11: WCPS Notice of the IEP Team Decision, PWN, Addendum to IEP, meeting date May 4, 2023
- Jt. Ex. 12: WCPS Meeting Minutes, meeting dates May 31, 2023 and June 1, 2023
- Jt. Ex. 13: WCPS Meeting Minutes, meeting date May 4, 2023
- Jt. Ex. 14: Student's IEP, May 31, 2023
- Jt. Ex. 15: [REDACTED] ([REDACTED]), Initial Occupational Therapy Evaluation, October 30, 2023
- Jt. Ex. 16: [REDACTED] Progress Note, February 27, 2024

- Jt. Ex. 17: WCPS Notice of the IEP Team Decision, PWN, Addendum to IEP, meeting date March 20, 2024
- Jt. Ex. 18: Student's IEP, March 20, 2024
- Jt. Ex. 19: Parent's IEE Request, March 20, 2024
- Jt. Ex. 20: Parent's Amended IEE Requests, March 27, 2024
- Jt. Ex. 21: Parent's Explanation of Amended IEE Requests, March 29, 2024
- Jt. Ex. 22: WCPS IEE Denial Letter, April 5, 2024
- Jt. Ex. 23: Joint Stipulations of Fact, undated

The WCPS did not offer any other exhibits for admission into evidence.

The Parent did not offer any other exhibits for admission into evidence.¹²

Testimony

The WCPS presented the testimony of the following witnesses:

- [REDACTED], WCPS speech-language pathologist, accepted as an expert in the area of speech language pathology in the educational setting, without objection;
- [REDACTED],¹³ WCPS occupational therapist, accepted as an expert in the area of occupational therapy in the educational setting, without objection;
- [REDACTED], WCPS school psychologist, accepted as an expert in the area of school psychology, without objection;

¹² On May 24, 2024, the Parent sent electronic copies of her proposed exhibits by email to the OAH and to counsel for the WCPS, as required by the Pre-Hearing Conference Report and Order (Order) that was issued on May 22, 2024. The Parent's proposed exhibits were not pre-marked for identification. The parties were required to submit hard copies of their proposed exhibits to the OAH by June 4, 2024, as detailed in the Order. The Parent did not send hard copies of her proposed exhibits; instead, at the outset of the hearing on June 5, 2024, the Parent stated that she did not seek to introduce those exhibits and would rely solely on the proposed joint exhibits as agreed to by the parties. On June 10, 2024, on the record, I again instructed the Parent to send a hard copy of all proposed exhibits to me at the OAH for retention in the file, to be delivered no later than June 17, 2024. COMAR 28.02.01.22B, C. The Parent agreed to do so on the record. However, on June 17, 2024, the Parent filed a pleading entitled "Withdrawal of Proposed Exhibit documents" requesting to retract her proposed exhibits and explaining the hardship she faced in compiling and sending hard copies. The Parent's proposed exhibits consist of over 120 documents and nine audio recording files. The OAH's Information Technology section downloaded the electronic copies of the Parent's proposed exhibits to a disk for retention in the file. COMAR 28.02.01.22B, C.

¹³ [REDACTED] holds a [REDACTED] in occupational therapy. *See* Transcript (Tr.), Volume (Vol.) 1, p. 68.

- [REDACTED], [REDACTED],¹⁴ WCPS special education supervisor, accepted as an expert in the area of psychology and as a board-certified behavior analyst, without objection;
- [REDACTED], WCPS special education specialist, accepted as an expert in the area of special education, without objection; and
- [REDACTED], WCPS special education specialist, accepted as an expert in the area of special education, without objection.

The Parent testified and did not present testimony from any other witnesses.

STIPULATIONS OF FACT¹⁵

The parties stipulated to the following facts:

1. [REDACTED] and [the Parent] are the parents of [the Student], born [in] January [] 2012.
2. [REDACTED] reside [in] [REDACTED]
[REDACTED]
3. [REDACTED] is a school within [the WCPS].
4. [The Student was] a sixth grade student at [REDACTED] [for the 2023-2024 school year].
5. [The Student] has an [IEP] through WCPS.
6. [The Student's] eligibility coding on his IEP is [REDACTED] due to a diagnosis of [REDACTED] ([REDACTED]), [REDACTED], [REDACTED] and [REDACTED].
7. On December 6, 2022, [the Parent] consented to WCPS conducting a Functional Behavioral Assessment [(FBA)].

¹⁴ Board certified behavioral analyst-doctorate.

¹⁵ The Stipulations of Fact document, signed by both parties, is admitted as Joint Exhibit 23. I have lightly edited the Stipulations of Fact as they appear here for consistency, to maintain confidentiality, and for ease of redaction. All edits and deletions are noted by brackets.

¹⁶ [REDACTED] did not participate in these proceedings and is not named as a representative on behalf of the Student.

8. At an IEP team meeting on February 7, 2023, the IEP team agreed to complete updated, comprehensive assessments.

9. The [Parent's] request for updated assessments on February 7, 2023 was so the IEP team could determine if a change in disability coding might be appropriate.

10. Consent for those assessments was provided on February 15, 2023.

11. WCPS conducted a [FBA] on February 17, 2023.

12. The following individuals contributed to the February 17, 2023 [FBA]: [REDACTED], Special Education Case Manager; [REDACTED], Math Teacher, 5th Grade; [REDACTED], ELA¹⁷ Teacher, 5th Grade; [REDACTED], [REDACTED]; [the] Parent; [REDACTED], Social Worker.

13. WCPS conducted an Occupational Therapy Evaluation on February 23, 2023.

14. The February 23, 2023 Occupational Therapy Evaluation was conducted by [REDACTED], [REDACTED], [REDACTED].^[18]

15. WCPS conducted an Educational Assessment – Wechsler Individual Achievement Test, 4th Ed. (WIAT-IV) on April 11, 2023.

16. The April 11, 2023 Educational Assessment was conducted by [REDACTED], Special Education Specialist.

17. WCPS conducted a Psychological Evaluation on April 17, 2023.

18. The April 17, 2023 Psychological Evaluation was conducted by [REDACTED], [REDACTED].^[19]

19. WCPS conducted a Speech/Language Assessment over a series of [twelve] dates in March and April 2023, with the final date being April 21, 2023.

¹⁷ English Language Arts.

¹⁸ [REDACTED].

¹⁹ No party, witness, or document admitted into evidence explained the meaning of these acronyms.

20. The March-April 2023 Speech/Language Assessment was conducted by [REDACTED], [REDACTED],²⁰ [REDACTED],²¹

21. WCPS conducted an Educational Assessment – CTOPP-2 on April 24, 2023.

22. The April 24, 2023 Educational Assessment was conducted by [REDACTED], Special Education Specialist.

23. The results of the functional behavioral, educational, psychological, speech/language and occupational therapy assessments were shared with the [Parent] over a series of IEP team meetings held on May 4, 2023, May 31, 2023, and June 1, 2023.

24. On October 19, 2023 and February 20, 2024, the [REDACTED] conducted private occupational therapy evaluations.

25. The February 20, 2024 [REDACTED] evaluation was reviewed by the IEP team at an IEP meeting on March 20, 2024.

26. On March 20, 2024, [the Parent] requested direct OT²² services during an IEP meeting and stated that a written IEE request would be emailed.

27. On March 20, 2024, [the Parent] sent WCPS a request for an [IEE], specifically a comprehensive occupational therapy evaluation.

28. On March 27, 2024, [the Parent] made an amended request to WCPS for an [IEE], specifically requesting evaluations in the following areas: comprehensive occupational therapy evaluation, neuropsychological evaluation, [FBA], [and] speech language assessment.

29. On March 29, 2024, [the Parent] sent WCPS an additional separate document which was an explanation of her request for [IEEs].

²⁰ [REDACTED].
²¹ [REDACTED].

²² Occupational therapy.

FINDINGS OF FACT

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

Background

1. The Student's native language is English. The WCPS conducted all evaluations and assessments of the Student in English.
2. The Student was a fifth-grade student at [REDACTED] School, a WCPS school, during the 2022-2023 school year.
3. At the Student's IEP team meeting on February 7, 2023, the IEP team, including the Parent, discussed whether the Student's disability coding should be changed from [REDACTED] to [REDACTED], based on the Parent's request that it be considered in light of the Student's diagnoses of [REDACTED], [REDACTED], and [REDACTED].²³
4. At the meeting, the Parent and her attorney also requested that the WCPS conduct evaluations of the Student related to [REDACTED] ([REDACTED]),²⁴ [REDACTED] ([REDACTED]),²⁵ and [REDACTED] ([REDACTED]).^{26, 27}

²³ Tr., Vol. 2, pp. 227-28.

²⁴ [REDACTED] (last visited July 4, 2024); see also *S.F.*, 2022 WL 3082980, at *4; *Maus v. Wappingers Cent. Sch. Dist.*, 688 F. Supp. 2d 282, 288 (S.D.N.Y. 2010).

²⁵ [REDACTED] (last visited July 4, 2024); see also *S.F. v. Smith*, No. 19-2207-PWG, 2022 WL 3082980, at *3 (D. Md. Aug. 3, 2022)

²⁶ [REDACTED] (last visited July 4, 2024); see also *S.F.*, 2022 WL 3082980, at *4.

²⁷ Tr., Vol. 2, p. 227.

5. The IEP team proposed the assessments to address the issues raised by the Parent, as part of the Student's triennial reevaluation, and in preparation for the Student's transition to middle school.²⁸

6. The Parent did not request any additional assessments at the meeting that were rejected by the WCPS.

7. On February 15, 2023, the Parent consented to the assessments of the Student agreed to by the IEP team in the following areas:

- a. Academic Performance
 - i. Reading
 - ii. Mathematics
 - iii. Written Language
- b. Communication
 - i. Articulation
 - ii. Expressive/Receptive Language
 - iii. Pragmatics
- c. Emotional/Social/Behavioral Development
- d. Motor Skills
 - i. Fine Motor
- e. Observation
- f. Other: visual motor, Sensory (OT), CTOPP-2, [REDACTED] rating scales, [REDACTED] rating scales²⁹

8. The Student was eleven years old at the time the WCPS conducted its assessments between February and April 2023.

The Functional Behavioral Assessment

9. The WCPS conducted prior FBAs of the Student in 2019, during his second grade school year, and in 2021, during his fourth grade school year. [REDACTED] participated as a team member in the prior FBAs, and therefore, is familiar with the Student.³⁰

10. [REDACTED] is a board-certified behavioral analyst; in obtaining that certification, he participated in 1,500 hours of supervised clinical experience in addition to

²⁸ See Jt. Ex. 6, p.1; Tr., Vol. 2, pp. 225-26.

²⁹ See Jt. Ex. 4.

³⁰ See Jt. Ex. 8, pp. 4-6; Tr., Vol 1, p. 161.

graduate-level coursework in the areas of applied behavior analysis, the assessment of behavior, and the treatment of behavior.³¹ He participates in approximately ten to fifteen FBAs per year.³²

11. [REDACTED] is appropriately trained and knowledgeable to conduct FBAs of students in accordance with the requirements of the IDEA and federal and state regulations.

12. In December 2022, the IEP team, including the Parent, identified the Student's engagement in refusal behaviors related to academics as the reason for the FBA.³³ The Student demonstrated refusal behavior when directed to start or participate in an activity.³⁴

13. The data collection period for the FBA was from January 2 to February 17, 2023.³⁵

14. The FBA team used a variety of assessment tools and strategies to gather sufficient, relevant, functional and behavioral information to develop the FBA. Specifically, the FBA team reviewed prior records, conducted observations, interviewed the Parent, and utilized the functional assessment screening tool (FAST), a structured rating scale.³⁶

15. The records reviewed included prior educational and psychological assessments, prior FBAs, prior behavior intervention plans (BIPs), and the Student's IEP. The observational data included classroom observations on January 20 and 26, 2023. [REDACTED] interviewed the Parent on January 26, 2023.³⁷ The FAST was completed by the Parent, the Student's math teacher, the Student's ELA teacher, and the Student's case manager.³⁸

³¹ See Tr., Vol. 1, pp. 154-55.

³² See Tr., Vol. 1, p. 156.

³³ See Jt. Ex. 8, p. 1; Tr., Vol. 1, p. 161.

³⁴ See Jt. Ex. 8, pp. 7-9; Tr., Vol.1, p. 162.

³⁵ See Tr., Vol. 1, p. 167.

³⁶ See Jt. Ex. 8, p. 8; Tr., Vol. 1, p. 164.

³⁷ See Jt. Ex. 8, p. 8.

³⁸ See Jt. Ex. 8, pp. 8, 10; Tr., Vol. 1, pp. 162-66.

16. ██████████ conducted the observations of the Student in an ELA class and a math class on January 20 and 26, 2023. He observed the Student refuse participation for fifty-nine minutes in the ELA class and for fifteen minutes in the math class.³⁹

17. The FBA team determined that the Student’s diagnoses of ██████████ and ██████████ impact the Student in communication, executive functioning, and self-regulation, which influence “his engagement in academic work and participation.”⁴⁰

18. The FBA team further determined that the Student’s ██████████ and fine motor deficits also impact his “classroom participation, at times.”⁴¹

19. ██████████ and the Student’s case manager reviewed the data and concluded that the Student engaged in refusal behavior after encountering a disappointment, and that “the function of the refusal was to avoid or escape something he found aversive.”⁴²

20. The team further concluded that the Student was “more likely to refuse academic activities when the following situations [occur]: instruction to write, testing, disappointments, academic interaction with peers, and non-preferred task to avoid and/or escape aversive situations in order to gain access to more preferred/less aversive situations.”⁴³

21. The team identified effective replacement behaviors to be building emotional recognition skills and developing “[c]oping strategies to manage situations that elicit difficult feelings when encountering disappointments.”⁴⁴

22. The team deferred specific recommendations of how those replacement behaviors would be implemented to the IEP team.⁴⁵

³⁹ See Jt. Ex. 8, p. 10; Tr., Vol. 1, pp. 168, 170.

⁴⁰ Tr., Vol. 1, p. 163; *see also* Jt. Ex. 8, pp. 8-9.

⁴¹ Jt. Ex. 8, p. 9.

⁴² Tr., Vol. 1, p. 168; *see also* Jt. Ex. 8, pp. 9-11.

⁴³ Jt. Ex. 8, p. 11; *see also* Tr., Vol. 1, p. 168.

⁴⁴ Jt. Ex. 8, p. 11; *see also* Tr., Vol. 1, p. 169.

⁴⁵ See Tr., Vol. 1, p. 174.

The WCPS Occupational Therapy Evaluation

23. The WCPS referred the Student for the occupational therapy re-evaluation to “assess fine motor skills, sensory processing and other occupational performance areas needed within the educational setting.”⁴⁶

24. At the time of the occupational therapy re-evaluation, [REDACTED] was an employee of the WCPS and was appropriately credentialed to conduct the re-evaluation.⁴⁷

25. In conducting the 2023 occupational therapy re-evaluation, [REDACTED] used a variety of tools and strategies to gather sufficient, relevant information.

26. [REDACTED] observed the Student’s pencil grip (how he holds the pencil) and pencil management (how he uses the pencil).⁴⁸

27. She asked the Student to write his first and last name and evaluated his handwriting.⁴⁹

28. She conducted three tests with the Student: the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI); the Bruininks-Oseretsky Test of Motor Proficiency, second edition (BOT-2); and the Sensory Processing Measure-2 (SPM-2).⁵⁰

29. The Beery VMI evaluates the integration of visual and motor abilities to produce an outcome. The assessment includes two supplemental tests of visual perception and motor coordination, all of which were conducted with the Student.⁵¹

⁴⁶ Jt. Ex. 5, p. 1. It is unclear from the record before me if [REDACTED] conducted prior evaluations with the Student.

⁴⁷ See Stipulation of Fact (SOF) #14; *see also* Jt. Ex. 5.

⁴⁸ See Jt. Ex. 5, p. 1.

⁴⁹ See Jt. Ex. 5, p. 1.

⁵⁰ See *id.*, pp. 2-7.

⁵¹ See Tr., Vol. 1, pp. 74-75.

30. The supplemental tests are not required to be given as part of the Beery VMI test but including them in the testing may provide a “deeper understanding” and “more comprehensive” view of a subject’s “perceptual abilities and the motor coordination abilities.”⁵²

31. The Student scored in the low range in the visual and motor integration portion of the Beery VMI. He scored in the average range for the visual subtest and in the low range for the motor coordination subtest.⁵³

32. The BOT-2 evaluates similar areas to the Beery VMI test in evaluating “fine motor integration, which is essentially the visual motor integration for the fine manual control.”⁵⁴ Another part of the BOT-2 assesses manual coordination and provides an in-depth evaluation of “manual dexterity and upper limb coordination.”⁵⁵

33. The Student scored in the below average range in the areas of fine manual control, fine motor precision, fine motor integration, and in the average range for manual coordination, manual dexterity, and upper limb coordination.⁵⁶

34. The SPM-2 evaluates sensory processing in the areas of vision, hearing, touch, taste and smell, body awareness, balance and moderation, sensory total, planning and ideas, and social participation.⁵⁷

35. The Student scored in the average range on SPM-2 for all categories.⁵⁸

36. Based on the assessments conducted, [REDACTED] identified the area of fine motor distal control to be an area of weakness for the Student, which compromises “his ability to complete intricate motor activities.”⁵⁹

⁵² *Id.*, p. 75.

⁵³ *See* Jr. Ex. 5, p. 2; Tr., Vol. 1, pp. 78-79.

⁵⁴ Tr., Vol. 1, p. 76.

⁵⁵ *Id.*

⁵⁶ *See* Jt. Ex. 5, p. 2-3; Tr., Vol. 1, pp. 79-80.

⁵⁷ *See* Jt. Ex. 5, p. 4; Tr., Vol. 1, p. 78.

⁵⁸ *See* Jt. Ex. 5, p. 5; Tr., Vol. 1, p. 80.

⁵⁹ Jt. Ex. 5, p. 7.

37. ██████████ used appropriate assessments to evaluate the Student and followed the testing protocols for the assessments that she conducted.⁶⁰

38. ██████████ deferred specific recommendations to the IEP team to be identified at its next meeting.⁶¹

The WCPS Speech/Language Assessment

39. ██████████ conducted a speech/language assessment of the Student over the course of twelve sessions (March 22, 23, 27, 28, April 3, 4, 5, 12, 14, 17, 19, and 21, 2023), totaling six hours and forty minutes.⁶²

40. ██████████ has a ██████████ in communication disorders and a ██████████ degree in speech language pathology. She holds a certificate of clinical competence through the American Speech Language Hearing Association (ASHA). She is licensed to practice speech pathology in Maryland. ██████████ has worked as a speech language pathologist in the school setting for twenty-four years and has worked for the WCPS for thirteen years. She conducts between thirty-five and fifty speech/language assessments per year.⁶³

41. The duration of testing depends on how well a subject performs during the test. Because the Student continued to demonstrate skills during the testing, scoring in the average to above average range, the testing took a longer amount of time.⁶⁴

42. ██████████ conducted the speech/language assessment of the Student to evaluate his skills in receptive language, expressive language, articulation, and pragmatics.⁶⁵

⁶⁰ See Tr., Vol. 1, pp. 75-78, 89.

⁶¹ See Jt. Ex. 5, p. 7.

⁶² See Jt. Ex. 7, p. 2.

⁶³ See Tr., Vol. 1, pp. 29-32.

⁶⁴ See *id.*, pp. 35-36.

⁶⁵ See Jt. Ex. 7, p. 1; Tr., Vol. 1, p. 34.

43. The Student was cooperative, compliant, and demonstrated appropriate behaviors and responses during the testing process.⁶⁶

44. [REDACTED] is familiar with the Student, as she conducted a prior assessment of him in November and December 2020.⁶⁷

45. In conducting the 2023 speech/language assessment, [REDACTED] used a variety of tools and strategies to gather sufficient, relevant information.

46. [REDACTED] reviewed her prior assessment of the Student, as well as the private assessments conducted by [REDACTED], [REDACTED],⁶⁸ [REDACTED], with [REDACTED] [REDACTED] in July 2021 and March 2022.⁶⁹

47. [REDACTED] began the assessment of the Student by conducting an informal, one on one observation of the Student in the areas of oral functioning and structures; pitch, quality, volume, and intensity of voice and fluency skills; and pragmatic/social communication and language skills. She did not identify any areas of concern in the informal observation of the Student.⁷⁰

48. [REDACTED] conducted three language assessments with the Student: the Peabody Picture Vocabulary Test, fifth edition (PPVT-5); the Oral Written Language Scales, second edition (OWLS-II); and the Comprehensive Assessment of Spoken Language, second edition (CASL-2). She conducted one articulation assessment, the Goldman-Fristoe Test of Articulation, third edition (GFTA-3).⁷¹

⁶⁶ See Jt. Ex. 7, p. 2.

⁶⁷ See Jt. Ex. 7, p. 1; Tr., Vol. 1, p. 36.

⁶⁸ [REDACTED].

⁶⁹ See Jt. Ex. 7, pp. 1-2; Tr., Vol. 1, p. 36.

⁷⁰ See Jt. Ex. 7, p. 3; Tr., Vol. 1, p. 37.

⁷¹ See Jt. Ex. 7; Tr., Vol. 1, pp. 37-38.

49. The PPVT-5 test evaluates comprehension of spoken words, also referred to as receptive vocabulary knowledge.⁷²

50. ██████████ followed the testing protocols for the PPVT-5 and implemented all aspects of the test.⁷³

51. The Student scored in the above expected range on the PPVT-5.⁷⁴

52. The OWLS-II test provides a comprehensive assessment of language, based on the administration of up to four scales. The scales test listening comprehension, oral expression, reading comprehension, and written expression.⁷⁵

53. The OWLS-II testing protocol does not require that all four scales be administered during the assessment.⁷⁶

54. ██████████ administered the listening comprehension and oral expression scales of the OWLS-II test to the Student.⁷⁷

55. ██████████ did not administer the reading comprehension or written expression scales of the OWLS-II test, because those areas were addressed by other qualified assessors.⁷⁸

56. ██████████ followed the testing protocol for the OWLS-II.⁷⁹

57. The Student scored in the above average range on the listening comprehension scale.⁸⁰ The Student scored in the average range on the oral expression scale.⁸¹ Overall, the Student scored in the average range on the OWLS-II.⁸²

⁷² See Jt. Ex. 7, p. 3; Tr., Vol. 1, p. 38.

⁷³ See Tr., Vol. 1, pp. 38-40.

⁷⁴ See Jt. Ex. 7, pp. 3-4; Tr., Vol. 1, p. 39.

⁷⁵ See Jt. Ex. 7, p. 4; Tr., Vol. 1, p. 43.

⁷⁶ See Tr., Vol. 1, p. 51.

⁷⁷ See Jt. Ex. 7, p. 4; Tr., Vol. 1, p. 44.

⁷⁸ See Tr., Vol. 1, pp. 45, 51-52.

⁷⁹ See *id.*, pp. 44-45.

⁸⁰ See Jt. Ex. 7, p. 4; Tr., Vol. 1, p. 45.

⁸¹ See Jt. Ex. 7, p. 4; Tr., Vol. 1, p. 45.

⁸² See Jt. Ex. 7, p. 4.

58. The CASL-2 test evaluates oral language skills in four categories: syntactic, meaning the understanding and use of grammar; super linguistic, meaning the ability to understand deeper meaning of words; lexical semantic, meaning word knowledge; and pragmatics, meaning social language skills. The CASL-2 is comprised of fourteen subtests.⁸³

59. Although the CASL-2 protocol does not require all fourteen subtests to be administered, [REDACTED] conducted all fourteen subtests with the Student and followed the testing protocol for the CASL-2.⁸⁴

60. The Student scored average or above average on twelve of the fourteen subtests administered as part of the CASL-2. He scored as exceptional on the receptive vocabulary test and below average on the grammaticality judgment test.⁸⁵

61. [REDACTED] determined the below average result on the grammaticality judgment test to be statistically significant. As a result, she conducted further evaluation of that score and the Student's score on grammatical morphemes, which is a related test, and she compared those 2023 scores to the Student's scores from the assessment in 2020.⁸⁶

62. [REDACTED] did not identify the below average result on the grammaticality judgment test as statistically significant in her report.⁸⁷

63. The Student scored an eighty-four on the grammaticality judgment test in 2023. The Student's score is one point below the average score, which ranges from eighty-five to 115.⁸⁸

⁸³ See Jt. Ex. 7, pp. 5-6; Tr., Vol. 1, p. 40.

⁸⁴ See Jt. Ex. 7, pp. 5-7; Tr., Vol. 1, pp. 41-42.

⁸⁵ See Jt. Ex. 7, pp. 5-7.

⁸⁶ See Tr., Vol. 1, pp. 58-60.

⁸⁷ Tr., Vol. 1, pp. 55, 58, 61, 62.

⁸⁸ See Jt. Ex. 7, pp. 5-6; Tr., Vol. 1, pp. 55-56, 65.

64. The grammaticality judgment test evaluates irregular past tense verbs. The Student provided two erroneous answers and one correct answer on that test.⁸⁹

65. ██████████ compared the Student's performance on the grammaticality judgment test with his performance on the grammatical morphemes test, pertaining to irregular past tense verbs. The Student scored average on the grammatical morphemes test and provided one erroneous answer and five correct answers pertaining to irregular past tense verbs.⁹⁰

66. As a result of her comparisons, ██████████ concluded that, overall, the Student understood the skill pertaining to irregular past tense verbs more often than not.⁹¹

67. The subtest scores of the CASL-2 are combined to create an index, or overall, score in the areas of general language ability, receptive language ability, expressive language ability, lexical/semantics ability, syntactic ability, and supralinguistic ability.⁹²

68. The Student's index scores on the CASL-2 were all in the average or above average range.⁹³

69. ██████████ compared the Student's 2023 CASL-2 index scores to his 2020 CASL-2 index scores and determined that the 2023 index scores were the same or higher than the 2020 index scores, indicating that the Student either made gains in the intervening three years, or his skills remained the same.⁹⁴

70. The GFTA-3 test evaluates how sounds are produced at the single word level and in connected speech.⁹⁵

⁸⁹ See Tr., Vol. 1, p. 57.

⁹⁰ See *id.*

⁹¹ See *id.*, pp. 57-58.

⁹² See Tr., Vol. 1, pp. 42-43. ██████████ did not identify which subtests were compiled for index scores in each area.

⁹³ See Jr. Ex. 7, p. 6; Tr., Vol. 1, pp. 42-43.

⁹⁴ See Jt. Ex. 7, pp. 1, 6; Tr. Vol 1., pp. 55, 57, 65.

⁹⁵ See Tr. Vol. 1, p. 46.

71. ██████████ followed the testing protocols for the GFTA-3 and implemented the test in its entirety.⁹⁶

72. The Student scored in the average range on all portions of the GFTA-3.⁹⁷

73. ██████████ deferred specific recommendations to the IEP team to be identified at its next meeting.⁹⁸

The WCPS Educational Assessment (WIAT-IV)

74. The WCPS's special education supervisors requested that ██████████ conduct the WIAT-IV testing of the Student to determine his current levels of academic functioning and to update existing test information specific to his general reading skills, his math skills, and his written language skills.⁹⁹

75. ██████████ has a ██████████ in special education and a ██████████ in psychology and special education. She has been employed by the WCPS for thirty-two years and was a classroom special education teacher for thirty years for sixth and seventh grades. She has been a special education specialist with WCPS for two years. She was originally trained to conduct special education testing while she was an undergraduate and again in graduate school and has attended numerous trainings on conducting testing throughout her career in relation to her employment with the WCPS. ██████████ conducts an average of 100 evaluations per year.¹⁰⁰

76. ██████████ did not know the Student prior to conducting the assessment.¹⁰¹

⁹⁶ See Jt. Ex. 7, pp. 7-8; Tr., Vol. 1, p. 47.

⁹⁷ See Jt. Ex. 7, pp. 7-8; Tr., Vol. 1, p. 47.

⁹⁸ See Jt. Ex. 7, p. 8; Tr., Vol. 1, pp. 62-63.

⁹⁹ See Jt. Ex. 10, p. 1; Tr., Vol. 1, pp. 182-83.

¹⁰⁰ See Tr., Vol. 1, pp. 177-180.

¹⁰¹ See *id.*, p. 182.

77. ██████████ conducted the testing on April 11, 2023 in three sessions, each of which lasted forty-five minutes to one hour; she provided the Student with breaks in between sessions.¹⁰²

78. ██████████ used some, but not all, WIAT-IV subtests to gather sufficient, relevant information as to the Student's skills in reading, math, and written language.

79. The WIAT-IV assessor has discretion in deciding which subtests to administer.¹⁰³

80. ██████████ did not administer the WIAT-IV subtests relating to alphabet writing and sentence writing fluency to the Student, as those tests are generally administered to students in first through fourth grades.¹⁰⁴ She also did not administer the oral language and expressive language subtests, as those skills were covered by the speech/language assessment.¹⁰⁵

81. ██████████ conducted the WIAT-IV testing of the Student according to the testing protocols.¹⁰⁶

82. ██████████ administered the following WIAT-IV subtests to the Student:

- Phonemic Proficiency
- Word Reading
- Reading Comprehension
- Math Problem Solving
- Orthographic Fluency
- Sentence Composition
- Oral Reading Fluency
- Essay Composition
- Pseudoword Decoding
- Numerical Operations
- Decoding Fluency
- Spelling
- Math Fluency: Addition
- Math Fluency: Subtraction
- Math Fluency: Multiplication¹⁰⁷

¹⁰² See Jt. Ex. 10, p. 1; Tr., Vol. 1, p. 184.

¹⁰³ See Tr., Vol. 1, p. 184.

¹⁰⁴ See Tr., Vol. 1, pp. 185, 201.

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*, p. 186.

¹⁰⁷ See Jt. Ex. 10, p. 2.

83. The Student scored in the high average range for overall reading.¹⁰⁸ He scored in the high average range, and above grade level, in reading comprehension, while his decoding and fluency skills rated in the average range.¹⁰⁹

84. The Student scored in the very low average range for overall written expression, with low average scores for sentence composition, spelling, and essay writing.¹¹⁰

85. The Student scored in the average range overall for math.¹¹¹

86. As a result of the Student's scores on the WIAT-IV, ██████████ recommended that the IEP team consider implementing the following strategies: use of writing rubrics, reminders to slow down and review work, small groups for written expression, building confidence by moving from easy to hard work, lessening writing amount to avoid fatigue, and use of a writing checklist to edit work.¹¹²

The CTOPP-2

87. ██████████ has been the Student's special education specialist and a member of his IEP team since late 2021, when the Student was in fourth grade.¹¹³

88. ██████████ also taught the Student during extended school year services and provided his instructional delivery for phonics intervention.¹¹⁴

89. ██████████ has a ██████████ in special education and a ██████████ in elementary education. She is currently finishing her ██████████ in educational leadership at

¹⁰⁸ See Jt. Ex. 10, p. 5; Tr., Vol. 1, p. 185. ██████████ testified she mistakenly classified the Student's reading subtest scores as average in the table on page 3 of her report. See Jt. Ex. 10, p. 3; Tr. Vol. 1, p. 185. She explained that the classification of high average for reading provided in the summary and conclusions section on page 5 of her report is correct. See Jt. Ex. 10, p. 5; Tr., Vol. 1, p. 185. I do not find this scrivener's error to detract from the validity of ██████████ report, based on the explanation she provided in her testimony.

¹⁰⁹ See Jt. Ex. 10, pp. 3-5; Tr., Vol. 1, pp. 187-88.

¹¹⁰ See Jt. Ex. 10, pp. 3-5; Tr., Vol. 1, p. 188. It is unclear from the record before me how low average skills in three areas contributed to a very low average overall.

¹¹¹ See Jt. Ex. 10, pp. 3-5; Tr., Vol. 1, p. 189-90.

¹¹² See Jt. Ex. 10, p. 5.

¹¹³ See Tr., Vol. 2, p. 222.

¹¹⁴ See *id.*, p. 226.

██████████. She taught ██████████ special education courses at ██████████ ██████████ for approximately six years and stopped teaching at that level to focus on finishing her ██████████ course work. She has been a teacher for twenty-seven years and has been employed by the WCPS for twenty-five years. She taught for five years in the general education setting and has taught in the elementary and middle school settings. She has been a special education specialist for four years and served as a special education case manager for fifteen years. In both of those roles, she has conducted evaluations, but does so less often now than when she was a case manager. She has administered the CTOPP-2 assessment approximately twelve to fifteen times in the last two to three years.¹¹⁵

90. On April 24, 2023, ██████████ conducted the CTOPP-2 assessment of the Student to determine his current levels of academic functioning and evaluate him for ██████████.¹¹⁶

91. The CTOPP-2 evaluates phonological processing abilities related to reading, including phonological awareness, phonological memory, and rapid naming, by determining how the subject breaks apart syllables, represents sounds, and whether the subject can put them together or manipulate them.¹¹⁷

92. The CTOPP-2 consists of twelve subtests; ██████████ did not implement three of the subtests because they pertain to children aged four to six years.¹¹⁸

93. ██████████ implemented the other nine subtests of the CTOPP-2 to evaluate the Student in the following areas:

- Elision – the ability to manipulate segments of words; taking segments from spoken words to form other words
- Blending words – the ability to synthesize sounds to form words
- Phoneme isolation – the ability to isolate individual sounds within words
- Memory for digits – the ability to repeat a string of numbers accurately

¹¹⁵ See Tr., Vol. 2, pp. 215-211.

¹¹⁶ See Jt. Ex. 9, p. 1.

¹¹⁷ See Jt. Ex. 9, p. 2; Tr., Vol. 2, pp. 220-21, 230.

¹¹⁸ See Tr., Vol. 2, p. 230.

- Nonword repetition – the ability to repeat nonwords accurately
- Rapid digit naming – the ability to rapidly name digits
- Rapid letter naming – the ability to rapidly name alphabet letters, not in order
- Blending nonwords – the ability to synthesize sounds to form nonwords
- Segmenting nonwords – the ability to segment nonwords into phonemes¹¹⁹

94. The subtest scores are consolidated to form composite scores in the areas of phonological awareness (elision, blending words, phoneme isolation); phonological memory (memory for digits, nonword repetition); rapid symbolic naming (rapid digit naming, rapid letter naming); and alternate phonological awareness (blending nonwords and segmenting nonwords).¹²⁰

95. The Student scored in the average range for the composite scores in phonological awareness, phonological memory, and alternate phonological awareness; he scored in the very poor range for rapid symbolic naming.¹²¹

96. The Student's score in the very poor range for rapid symbolic naming indicates areas of relative weakness in the areas of rapidly recalling numbers and letters, efficient retrieval of phonological information from long-term memory, and quick and repeated execution of a sequence of operations.¹²²

97. In order to address these areas, [REDACTED] recommended that the IEP team consider including extended time and monitoring of his reading fluency with remediation if an impact was identified.¹²³

98. [REDACTED] followed the testing protocols and implemented all pertinent subtests of the CTOPP-2 in conducting this assessment of the Student.¹²⁴

¹¹⁹ See Jt. Ex. 9, p. 2; Tr., Vol. 2, pp. 231-32.

¹²⁰ See Jt. Ex. 9, p. 3; Tr., Vol. 2, p. 233.

¹²¹ See Jt. Ex. 9, p. 3; Tr., Vol. 2, p. 233.

¹²² See Jt. Ex. 9, p. 4; Tr., Vol. 2, p. 233.

¹²³ See Jt. Ex. 9, p. 4; Tr., Vol. 2, p. 235.

¹²⁴ See Tr., Vol. 2, p. 233.

The Psychological Assessment

99. The Student was referred to [REDACTED] for a psychological re-evaluation for educational purposes, which [REDACTED] conducted on April 17, 2023.¹²⁵

100. [REDACTED] has a master's degree in school psychology and a [REDACTED] with a major in psychology and a minor in family studies. She is a certified school psychologist in [REDACTED], since 2015, and in Maryland, since 2017. She taught preschool in between semesters and school years while she was an undergraduate and assisted a college professor by proctoring a course entitled "Introduction to Exceptional Children." She served as a graduate assistant for a cognitive assessment course and assisted in the administration of cognitive assessments and checked protocols for accuracy. [REDACTED] has been employed by the WCPS since 2018.¹²⁶

101. [REDACTED] did not know the Student prior to conducting the evaluation.¹²⁷

102. In conducting the 2023 psychological re-evaluation, [REDACTED] used a variety of tools and strategies to gather sufficient, relevant information, including: reviewing his educational record; reviewing prior assessments; requesting narrative information from the Student's teachers; conducting an observation of the Student; and evaluating results from three rating scales completed by the Parent and three of the Student's teachers: his ELA/social studies teacher, his math/science teacher, and his [REDACTED] ([REDACTED]) teacher.¹²⁸

103. [REDACTED] conducted the psychological re-evaluation for purposes of identifying how the Student's behaviors related to his established diagnoses of [REDACTED] and [REDACTED] may be affecting him in the educational setting; she further found it appropriate to conduct executive

¹²⁵ See Jt. Ex. 6, p. 1; Tr., Vol. 1, pp. 120-21.

¹²⁶ See Tr., Vol. 1, pp. 116-18.

¹²⁷ See *id.*, p. 121.

¹²⁸ See Jr. Ex. 6; Tr., Vol. 1, pp. 125-30.

functioning rating scales as requested by the Parent, because that information might also be relevant in the educational setting.¹²⁹

104. On April 17, 2023, [REDACTED] observed the Student during his math class for approximately forty minutes.¹³⁰

105. [REDACTED] used the [REDACTED] ([REDACTED]) to assess patterns in the Student's behavior related to [REDACTED].¹³¹

106. The [REDACTED] scores showed that the Parent and the Student's [REDACTED] teacher observed significant concerns related to the Student's [REDACTED], while his ELA/social studies and math/science teachers observed minimal behaviors related to [REDACTED].¹³²

107. [REDACTED] used the Conners-4 Rating Scales (Conners-4) to assess patterns in the Student's behavior related to [REDACTED].¹³³

108. The Conners-4 scores showed that the Parent and the Student's [REDACTED] teacher observed significant behavioral concerns related to the Student's [REDACTED], while his ELA/social studies and math/science teachers observed minimal behaviors related to [REDACTED].¹³⁴

109. The scores reported by the Student's [REDACTED] teacher on the Conners-4 indicated an elevated Negative Impression Index score, meaning that "the teacher may have provided an unrealistic or exaggerated presentation of [the Student's] problems."¹³⁵ Consequently, the [REDACTED] teacher's rating "should be interpreted with caution."¹³⁶

¹²⁹ See Tr., Vol. 1, pp. 121, 139.

¹³⁰ See Jt. Ex. 6, pp. 6-7.

¹³¹ See Jt. Ex. 6, pp. 7-8; Tr., Vol. 1, p. 127.

¹³² See Jt. Ex. 6, p. 17; Tr., Vol. 1, p. 131.

¹³³ See Jt. Ex. 6, pp. 10-13; Tr., Vol. 1, p. 132.

¹³⁴ See Jt. Ex. 6, pp. 10-13; Tr., Vol. 1, p. 134.

¹³⁵ Jt. Ex. 6, p. 12.

¹³⁶ *Id.*

110. ██████ used the Comprehensive Executive Function Inventory (CEFI) rating scales to assess the Student’s executive functioning behaviors, including memory, organization, initiating tasks, and planning.¹³⁷

111. The CEFI scores showed that the Parent and the Student’s ██████ teacher reported overall scores in the below average range. The Student’s ELA/social studies teacher reported overall scores in the low average range and his math/science teacher reported overall scores in the average range. All scorers identified initiation as an area of concern for the Student.¹³⁸

112. The scores reported by the Parent on the CEFI indicated an elevated Consistency Index score, indicating “an inconsistent response style.”¹³⁹ Consequently, the Parent’s rating “should be interpreted with caution.”¹⁴⁰

113. The scores reported by the Student’s ██████ teacher on the CEFI also indicated a Negative Impression Index scale and “should be interpreted with caution.”¹⁴¹

114. ██████ followed the testing protocols in conducting the ██████, the Conners-4, and the CEFI.¹⁴²

115. ██████ made recommendations based on her findings for further consideration by the IEP team.¹⁴³

The IEP Team Meetings on May 4, May 31, and June 1, 2023

116. At the IEP team meeting held on May 4, 2023, the IEP team determined that the Student did not require a BIP, based, in part, on the results of the FBA.¹⁴⁴

¹³⁷ See *id.*, pp. 13-14; Tr., Vol. 1, p. 135.

¹³⁸ See Jt. Ex. 6, pp. 14-15.

¹³⁹ *Id.*, p. 14.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See Tr., Vol. 1, pp. 130-31, 134, 137.

¹⁴³ See Jt. Ex. 6.

¹⁴⁴ See Jt. Exs. 11, 13.

117. The IEP team made this decision over the objection of the Parent and her attorney.¹⁴⁵

118. The Parent did not express any other disagreement with the outcome of the assessments at the IEP team meetings on May 4, May 31, and June 1, 2023.¹⁴⁶

The WCPS Response to the Parent's Requests for IEEs

119. In a letter dated April 5, 2024, [REDACTED], on behalf of the WCPS, denied the Parent's request for an IEE in the area of occupational therapy.¹⁴⁷

120. In the letter, [REDACTED] noted that the Parent had advised the WCPS in a telephone call the day prior that she would send additional information in support of her IEE requests and areas of disagreement by April 5, 2024, but noted that no further information had yet been received.¹⁴⁸

121. [REDACTED] indicated that the WCPS would consider the Parent's additional IEE request upon receipt of that information.¹⁴⁹

122. The WCPS filed the WCPS Complaint on April 25, 2024.

DISCUSSION

LEGAL FRAMEWORK

A local education agency (LEA) generally must ensure a child with a disability is reevaluated at least once every three years.¹⁵⁰ Parents who disagree with a school evaluation may, under certain circumstances, obtain an IEE at public expense.¹⁵¹ An IEE is defined as “an evaluation conducted by a qualified examiner who is not employed by the public agency

¹⁴⁵ See Jt. Exs. 11, 13.

¹⁴⁶ See Tr., Vol. 2, p. 239.

¹⁴⁷ See Jt. Ex. 22.

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*

¹⁵⁰ 20 U.S.C.A. § 1414(a)(2); 34 C.F.R. § 300.303; COMAR 13A.05.01.06E.

¹⁵¹ 34 C.F.R. § 300.502(a)(1); COMAR 13A.05.01.14B.

responsible for the education of the child in question.”¹⁵² Public expense means that “the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.”¹⁵³

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations. Under the IDEA, “[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.”¹⁵⁴ In Maryland, a parent may also obtain an IEE if the LEA fails to respond within thirty days of the parent’s request; or approves the request but fails to convene an evaluation IEP meeting within sixty days of receipt of the parent’s request, or within ninety days during a state of emergency.¹⁵⁵ Upon receiving a request for an IEE at public expense, a LEA has one of two choices: provide the evaluation at public expense¹⁵⁶ or file a special education due process complaint to defend its evaluation.¹⁵⁷

For the LEA’s evaluation to be appropriate, it must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining” the student’s eligibility, educational disability, and the content of the student’s IEP.¹⁵⁸ Furthermore, the LEA shall “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” and must

¹⁵² 34 C.F.R. § 300.502(a)(3)(i).

¹⁵³ 34 C.F.R. § 300.502(a)(3)(ii).

¹⁵⁴ 34 C.F.R. § 300.502(b)(1); *see also* Educ. § 8-405(b)(4)(i)(1); COMAR 13A.05.01.14B(1).

¹⁵⁵ Educ. § 8-405(b)(4)(i)(2); COMAR 13A.05.01.14B(2).

¹⁵⁶ “When a parent requests an [IEE] at public expense, the public agency shall provide a written response approving or denying the request within 30 days of the date the request was made.” COMAR 13A.05.01.14B(2); *see also* Educ. § 8-405(b)(4)(ii).

¹⁵⁷ 34 C.F.R. § 300.502(b)(2)(i)-(ii); Educ. § 8-405(b)(4)(iii)-(iv).

¹⁵⁸ 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06.

“use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.”¹⁵⁹

In addition, the LEA is obligated to ensure that assessments and other evaluation materials:

- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- (iii) are used for purposes for which the assessments or measures are valid and reliable;
- (iv) are administered by trained and knowledgeable personnel; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments.¹⁶⁰

Finally, the LEA must assess a student in “all areas of suspected disability.”¹⁶¹

The WCPS bears the burden of showing that its evaluations are appropriate under the IDEA.¹⁶² The standard of proof in this case is a preponderance of the evidence.¹⁶³ To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered.¹⁶⁴ In *E.P. ex rel. J.P. v. Howard County Public School System*, the United States District Court for the District of Maryland clarified the analysis when it adopted the language of previous courts and stated:

In challenging an evaluation, courts have found that a parent ‘cannot simply argue that the evaluation was inappropriate because they disagree with its findings.’ . . . In [*West Chester Area School District v. G.D.*], the court explained: ‘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

¹⁵⁹ 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C.

¹⁶⁰ 20 U.S.C.A. § 1414(b)(3)(A); *see also* 34 C.F.R. § 300.304(c)(1); *see also* COMAR 13A.05.01.05.

¹⁶¹ 20 U.S.C.A. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4); *see also* COMAR 13A.05.01.05B(1).

¹⁶² *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i).

¹⁶³ State Gov’t § 10-217; COMAR 28.02.01.21K(1).

¹⁶⁴ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

judgment rendered is actually wrong, and not just in doubt. For example, a plaintiff must show evidence of a flawed evaluation process, by failing to follow regulatory requirements, or if the district failed to investigate an area of suspected disability with little or no explanation why.^{165]}

TIMELINESS OF THE WCPS DENIALS OF THE IEE REQUESTS

In the answer filed¹⁶⁶ in response to the WCPS Complaint, the Parent asserted, among other arguments, that the WCPS failed to timely approve or deny her March 27, 2024 request for IEEs of the Student. At the hearing, the Parent did not further pursue this argument and the WCPS provided no response to this assertion. I briefly address the issue here for completeness.

As noted above, in Maryland, a parent may obtain an IEE if the LEA fails to respond within thirty days of the parent's request. Pursuant to COMAR 13A.05.01.14B(2), “[w]hen a parent requests an [IEE] at public expense, the public agency shall provide a written response approving or denying the request within 30 days of the date the request was made.”¹⁶⁷

On March 20, 2024, the Parent sent her original request for an IEE of the Student for occupational therapy to the WCPS.¹⁶⁸ On March 27, 2024, the Parent amended that request, and made the additional requests for IEEs to the WCPS, in writing, to include FBA, speech and language, educational, and psychological assessments.¹⁶⁹ On April 5, 2024, [REDACTED], on behalf of the WCPS, replied to the Parent by letter that the request for the occupational therapy IEE was denied.¹⁷⁰ In the same letter, [REDACTED] further acknowledged the Parent's intent to send “further details as to which area(s) of the assessments you disagree with” by that same date

¹⁶⁵ *E.P. ex rel. J.P. v. Howard County Public School System*, No. ELH-15-3725, 2017 WL 3608180, at *28 (D. Md. Aug. 21, 2017), *aff'd per curiam*, 727 F. App'x 55 (4th Cir. June 19, 2018) (citations and footnotes omitted). In that case, the parents appealed a finding in favor of the school system, and therefore, the burden of proof was allocated to them. Although the Parent has no burden of proof in this matter, the analysis used by the Court is relevant to determine the appropriateness of the WCPS evaluations.

¹⁶⁶ The Parent filed this document with the OAH on May 29, 2024.

¹⁶⁷ See also Educ. § 8-405(b)(4)(i)(2)(A), (ii).

¹⁶⁸ SOF #27.

¹⁶⁹ SOF #28.

¹⁷⁰ See Jt. Ex. 22.

and noted that no such information had yet been received.¹⁷¹ [REDACTED] advised that the WCPS would consider that information upon receipt.¹⁷²

The record before me contains no evidence or testimony about any oral communications or written correspondence between the parties after April 5, 2024. The WCPS filed the WCPS Complaint on April 25, 2024, which was one day prior to the expiration of the thirty-day time frame in which to respond to the March 27, 2024 amended request for IEEs as required by the Maryland statute and regulation.¹⁷³ Here, the WCPS complaint serves as the denial of the Parent's March 27, 2024 request for IEEs. Both the April 5, 2024, letter denying the occupational therapy IEE, as originally filed on March 20, 2024¹⁷⁴ and amended on March 27, 2024,¹⁷⁵ and the WCPS Complaint, filed April 25, 2024, denied the Parent's requests for the other IEEs in writing.

I conclude that the WCPS timely denied the Parent's IEE requests in compliance with the statute and regulation.¹⁷⁶ I further conclude that the WCPS complied with the plain language of the federal regulation by filing its Complaint "without unnecessary delay," which placed the Parent on notice of its intent to defend all five of the WCPS evaluations as listed in the Complaint, instead of approving them.¹⁷⁷ There was no allegation made or evidence introduced to establish that the Parent did not receive the WCPS Complaint on April 25, 2024.

THE POSITIONS OF THE PARTIES

The WCPS maintains that the issue here is a narrow one; specifically, whether the evaluations of the Student administered by the WCPS met the IDEA requirements outlined

¹⁷¹ *Id.*, p. 2.

¹⁷² *See id.*

¹⁷³ Thirty days from March 27, 2024 is April 26, 2024.

¹⁷⁴ Sixteen days elapsed from March 20, 2024 to April 5, 2024.

¹⁷⁵ Nine days elapsed from March 27, 2024 to April 5, 2024.

¹⁷⁶ Educ. § 8-405(b)(4)(i)(2)(A), (ii); COMAR 13A.05.01.14B(2).

¹⁷⁷ 34 C.F.R. § 300.502(b)(2)(i)-(ii).

above. The WCPS contends that the evaluations were comprehensive, appropriate, and consistent with the requirements of the IDEA and its accompanying regulations, thereby warranting denial of the Parent's request for IEEs at public expense.

The Parent asserts that the assessments were not comprehensive and that the evaluators failed to use their clinical judgment and ethical responsibility to take further steps to evaluate discrepancies and deficits identified during the testing. The Parent argues that some skills were not assessed. The Parent also avers the recommendations made by the assessors did not address the severity of some of the scores identified in the testing. The Parent's specific challenges to each assessment will be further addressed below.

ANALYSIS

For the reasons discussed below, I find that the WCPS has met its burden to demonstrate that the evaluations of the Student conducted between February and April 2023 were appropriate under the IDEA. I discuss each evaluation in turn.

*The FBA*¹⁷⁸

██████████ is a board-certified behavior analyst and has a ██████████ in clinical psychology, a ██████████ in health administration, and a ██████████ certificate in ██████████ and behavioral intervention. He has worked in the educational setting since 2008 and has been employed by the WCPS since 2017. ██████████ is a board-certified behavioral analyst; in obtaining that certification, he participated in 1,500 hours of supervised clinical experience in addition to graduate-level coursework in the areas of applied behavior analysis, the assessment of behavior, and the treatment of behavior. He conducts or participates in ten to fifteen FBAs per

¹⁷⁸ The United States Court of Appeals for the Second Circuit recently held that a parent is not entitled to an IEE for an FBA; however, the WCPS did not make such an argument. *See D.S. By & Through M.S. and R.S. v. Trumbull Bd. of Educ.*, 975 F.3d 152, 162–67 (2d Cir. 2020) (holding that an FBA is not an evaluation for IEE purposes, but rather is an assessment tool; the United States Department of Education guidance was not given deference by the court because the statutory language in the IDEA regarding what constitutes an evaluation is unambiguous).

year. I accepted [REDACTED] as an expert in the areas of psychology and board-certified behavioral analysis, without objection.

[REDACTED] and members of the school-based team collaborated to determine the appropriate methods of conducting the FBA related to the Student's refusal behavior. They reviewed FBAs conducted with the Student in 2019 and 2021, as well as prior educational and psychological assessments and the Student's IEP. The team collected data from January 2 to February 17, 2023. The Student's teachers compiled data on incidents of refusal to share with the team. [REDACTED] interviewed the Parent and observed the Student in two classes; he observed the Student demonstrate refusal behavior in both. The Parent, two teachers, and the Student's case manager completed the FAST, which are rating scales. [REDACTED] credibly asserted that there were no additional assessment methods that should have been conducted but were not conducted.

[REDACTED] and [REDACTED], special education case manager, reviewed the data and identified the Student's disappointment as a trigger for refusal behavior, and further noted that the Student engaged in refusal behavior to avoid or escape an undesired task. [REDACTED] testified that the Student's clinical diagnoses of [REDACTED], [REDACTED], and [REDACTED] influence his engagement and participation in academic work. He further explained that the FBA conducted in 2023 provided context for the Student's refusal behavior. The team considered the data collected in 2023 and then used the information collected to identify possible replacement behaviors to be considered by the IEP team; specifically, building emotional regulation skills and identifying coping strategies to manage difficult feelings in disappointing situations. On cross-examination, [REDACTED] conceded that the FBA team did not identify how those replacement behaviors might be implemented but explained that implementation is an IEP team decision.

In support of her request for an IEE, the Parent asserted that the FBA was “unethical, misleading, inaccurate, incomplete, and inappropriate.”¹⁷⁹ She further criticized the WCPS’ failure to implement a BIP based on the FBA,¹⁸⁰ challenged the recommendations in the FBA, and asserted that the IEP failed to implement the recommendations in the FBA.¹⁸¹ The Parent did not develop these points in cross-examination of [REDACTED]. More importantly, the Parent’s stated objections focus on issues not directly related to the elements required by the governing statute and regulations for assessments. Therefore, I give these assertions little weight.

The WCPS demonstrated by a preponderance of the evidence that that [REDACTED] and the FBA team conducted the FBA in accordance with the statutory and regulatory requirements.¹⁸² The team used a variety of assessment tools and strategies in gathering information and did not rely on any single measure or assessment in identifying the causes of the Student’s behavior and making its recommendation to the IEP team.¹⁸³ [REDACTED] is appropriately trained and knowledgeable to conduct FBAs of students in accordance with the requirements of the IDEA and federal and state regulations.¹⁸⁴

While [REDACTED] did not indicate in his report or his testimony that the FAST was a technically sound instrument used to assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors,¹⁸⁵ that the FAST was administered in accordance with the manufacturer’s instructions,¹⁸⁶ or that the assessments are valid and reliable

¹⁷⁹ Jt. Ex. 21, p. 6.

¹⁸⁰ Although an FBA can be used to develop a BIP if deemed necessary by the IEP team (*see* COMAR 13A.08.04.02B(7)(a)), it can also be used to develop specific social, emotional or behavior goals; supplementary aids and supports; and identify related services such as counseling, psychological or social work services in the student’s IEP, if deemed necessary by the IEP team. *See* 34 C.F.R. § 300.320(a)(2), (4); 34 C.F.R. § 300.34(c)(2), (10), (14).

¹⁸¹ *See id.*

¹⁸² 20 U.S.C.A. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b), (c); COMAR 13A.05.01.05.

¹⁸³ 20 U.S.C.A. § 1414(b)(2)(A), (B); 34 C.F.R. § 300.304(b)(1), (2); COMAR 13A.05.01.05B(2), (3).

¹⁸⁴ 20 U.S.C.A. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); COMAR 13A.05.01.05C(2)(b).

¹⁸⁵ 20 U.S.C.A. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); COMAR 13A.05.01.05C(1)(a).

¹⁸⁶ 20 U.S.C.A. § 1414(b)(3)(A)(5); 34 C.F.R. § 300.304(c)(1)(v); COMAR 13A.05.01.05C(2)(b).

for the purposes for which they were used,¹⁸⁷ the Parent made no assertion to the contrary. Despite the lack of further testimony regarding the FAST, the WCPS has met all of the regulatory components in its FBA, because it identified the functions of Student's behavior, described the problem behavior, and identified intervening factors which contributed to the Student's behavior.¹⁸⁸

Similarly, the Parent made no assertion, nor do I find, that the FBA was selected or conducted in a racially or culturally discriminatory fashion.¹⁸⁹ It is undisputed that the FBA was conducted in the Student's native language.¹⁹⁰ Based on my review of the report and the credible testimony of [REDACTED], I conclude that the FBA is valid and reliable for the purpose for which it was used.¹⁹¹

The WCPS Occupational Therapy Evaluation

[REDACTED] obtained her [REDACTED] in occupational therapy in 2021 and a master's degree in occupational therapy in 1999. She is board certified in occupational therapy and is licensed in [REDACTED] and [REDACTED]. She has been employed by the WCPS as an occupational therapist for fifteen years and worked in private practice, providing services in a school-based setting for eighteen years. She has provided occupational therapy in a home setting for three years and in a nursing home setting for one year. She conducts occupational therapy evaluations for WCPS and estimated that she conducts at least twenty-five evaluations per year. I accepted [REDACTED] as an expert in the area of occupational therapy in the educational setting, without objection.

¹⁸⁷ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

¹⁸⁸ COMAR 13A.08.04.02B(7)(b).

¹⁸⁹ 20 U.S.C.A. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); COMAR 13A.05.01.05A.

¹⁹⁰ 20 U.S.C.A. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); COMAR 13A.05.01.05C(1)(b).

¹⁹¹ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

On a date not specified in the record, ██████████ reviewed the February 23, 2023 occupational therapy re-evaluation conducted by ██████████, ██████████, ██████████, ██████████ reviewed ██████████ report and validated the accuracy of the scores reported by ██████████ ██████████ based on a review of the manual for the tests. In her opinion, the evaluation conducted by ██████████ appropriately assessed the Student’s fine motor and sensory processing abilities. She found that the tests and subtests implemented by ██████████ were comprehensive and thorough, to give the IEP team a “deeper understanding of [the Student’s] perceptual abilities and the motor coordination abilities.”¹⁹² She did not identify any tests that should have been conducted that were not implemented. She did not identify any areas of disagreement with ██████████ analysis and recommendations.

██████████ also reviewed the independent evaluations conducted by the ██████████ at the Parent’s request, noting that an initial evaluation was conducted and summarized in a report dated October 19, 2023, while a progress note was dated February 20, 2024.¹⁹³ ██████████ noted that the progress note included data from the initial evaluation. She explained that the ██████████ conducted the BOT-2 test with the Student but conducted one-fourth of the available subtests, while ██████████ conducted one-half of the available subtests. ██████████ identified an error in the ██████████ calculations on the BOT-2 in translating a raw score to a standard score. She further noted that the assessment conducted by the ██████████ in 2024 showed that the Student had improved since the testing conducted by the WCPS in 2023.

██████████ testified that the ██████████ implemented the Beery VMI with the Student but did not conduct the visual perceptual or motor coordination subtests that ██████████ used with the Student. The Student scored in the low range on the Beery VMI conducted by the

¹⁹² Tr., Vol. 1, p. 75.

¹⁹³ See Jt. Exs. 15, 16.

WCPS and scored in the average range when the test was conducted by the [REDACTED]. The [REDACTED] conducted a different test of sensory perception, as well as two additional tests.

[REDACTED] opined that both the WCPS occupational therapy assessment and the [REDACTED] assessment captured information relevant to the student's fine motor and sensory processing abilities. She distinguished the [REDACTED] testing from that conducted by the WCPS by noting that the [REDACTED] is a medical model that focuses on more broad areas, including body structure and strength. She explained that the WCPS focuses on assessing a person in the role of a student and the impact on education.

[REDACTED] disagreed with the Parent that [REDACTED] was required to include a recommendation for remediation in her report but noted that it would not have been inappropriate to do so. [REDACTED] testified that specific remediation measures must be determined by the IEP team. She further explained that, when she evaluates a child up to seven years, eleven months of age, she is permitted to make a determination regarding eligibility for services; if a child is older than seven years, eleven months, occupational therapy is a related service. She does not evaluate a child of that age or older for purposes of qualifying the child for special education services.

In her written request for an IEE, the Parent noted her disagreement with the removal of occupational therapy services from the Student's IEP and asserted that the scores on the WCPS assessment supported the Student's continued need for "direct OT services with evolved IEP goals and objectives" in numerous areas.¹⁹⁴ These objections focus on issues not directly related to the elements of assessments required by the governing statute and regulations. Indeed, the Parent's disagreement focuses on how the assessments were used to develop the contents of the

¹⁹⁴ *Id.*, p. 5.

IEP, rather than the appropriateness of the evaluations. Therefore, I give these assertions little weight.

In support of her request for an IEE, the Parent asserted that the WCPS occupational therapy evaluation was “unethical, misleading, inaccurate, incomplete, and inappropriate.”¹⁹⁵ The Parent alleged that the scores from the assessments conducted by ██████████ did not represent the Student’s “current strengths and weaknesses in all areas.”¹⁹⁶ The Parent criticized the WCPS evaluation as not comprehensive in “all areas of concern” including handwriting speed, fatigue, motor strength, grip strength, and typing speed.¹⁹⁷ On cross-examination, ██████████ conceded that ██████████ did not measure the Student’s handwriting speed. The Parent did not further develop the additional points in cross-examination of ██████████.

There is no evidence that the Parent or her attorney ever expressed concerns in these particular areas or that the IEP team had any specific data to support a suspicion that testing in these areas was needed to assist in educational identification, evaluation, and programming for the Student. The IEP team and the WCPS assessors cannot act on information unknown. I find that the IEP team agreed to conduct an occupational assessment in the area of motor skills, particularly fine motor skills, visual motor skills, and sensory processing, for the purposes of determining the appropriate disability coding, as part of the Student’s triennial evaluation, and for the Student’s transition to middle school.¹⁹⁸ Therefore, there is no evidence in the record for me to conclude that the student was not assessed in all areas of suspected disabilities.

The Parent testified that, at the time she consented to the assessments in February 2023, she had voiced concerns about the Student’s gross motor skills.¹⁹⁹ She asserted that this area

¹⁹⁵ Jt. Ex. 21, p. 5.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*, pp. 5-6.

¹⁹⁸ See Findings of Fact (FOF) #3-4, 6-7.

¹⁹⁹ See Tr., Vol. 2, p. 277.

should have been evaluated in the occupational therapy assessment, because she believes that the Student's weak gross motor skills contribute to his fatigue when completing writing assignments during the school day.²⁰⁰ While I have no reason to doubt the Parent's concern, her assertion that she voiced this concern in 2023 is uncorroborated in the record before me. The evidence and testimony establish that the Parent signed the consent for the WCPS to conduct assessments on February 15, 2023.²⁰¹ There is no indication that she requested that the consent form be modified to include assessments for gross motor skills. The record is devoid of any evidence to suggest that the IEP team required a gross motor skill assessment to further program for the Student's [REDACTED], which affects fine motor skills. The Parent did not present any evidence from the Student's IEPs to support her assertion that the team should have suspected educational deficits in the Student's gross motor skills.²⁰² Therefore, I am unpersuaded that the WCPS occupational therapy evaluation failed to assess the Student in all areas within the occupational therapy discipline.²⁰³

I find that the WCPS has demonstrated by a preponderance of the evidence that [REDACTED] [REDACTED] conducted the occupational therapy assessment in accordance with the statutory and regulatory requirements.²⁰⁴ She used a variety of assessment tools and strategies in gathering information and did not rely on any single measure or assessment.²⁰⁵ [REDACTED] stated in her report, and [REDACTED] opined, that [REDACTED] used technically sound instruments to assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.²⁰⁶ [REDACTED] noted in her report that her findings did not reflect

²⁰⁰ *See id.*

²⁰¹ *See* SOF #10.

²⁰² *See* FOF #21.

²⁰³ 20 U.S.C.A. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4); *see also* COMAR 13A.05.01.05B(1).

²⁰⁴ 20 U.S.C.A. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b), (c); COMAR 13A.05.01.05.

²⁰⁵ 20 U.S.C.A. § 1414(b)(2)(A), (B); 34 C.F.R. § 300.304(b)(1), (2); COMAR 13A.05.01.05B(2), (3).

²⁰⁶ 20 U.S.C.A. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); COMAR 13A.05.01.05C(1)(a).

that the testing was conducted in a racially or culturally discriminatory fashion.²⁰⁷ Based on my review of the report and the credible testimony of [REDACTED], I conclude that the assessments conducted by [REDACTED] are valid and reliable for the purposes for which they were used.²⁰⁸ The parties stipulated that [REDACTED] held the appropriate credentials to conduct the evaluation.^{209, 210} [REDACTED] reviewed [REDACTED] report and compared [REDACTED] scoring to the manuals to ensure their accuracy; [REDACTED] did not identify any areas of disagreement with [REDACTED] assessment.²¹¹ It is undisputed that the occupational therapy evaluation was conducted in the Student's native language.²¹²

Furthermore, I give the [REDACTED] initial evaluation and progress note some weight in finding that the WCPS assessment was appropriate, because the [REDACTED] assessors used some of the same tests. That weight is tempered by [REDACTED]' explanation that the WCPS assessment is limited to issues that may arise in the education context, instead of overall issues related to the medical model used by the [REDACTED].

The WCPS met its burden of proof to show that it fully complied with 34 C.F.R. section 300.304 and COMAR 13A.05.01.05 as to the occupational therapy evaluation; the Parent did not refute the WCPS' evidence by showing that the professional judgment rendered by [REDACTED], is "actually wrong, and not just in doubt."²¹³ The Parent did not call an expert witness or any of the [REDACTED] assessors for testimony concerning the occupational therapy evaluation. The Parent's arguments against the WCPS evaluation do not rest upon evidence that the WCPS failed to comply with any of the statutory and regulatory requirements; instead, she

²⁰⁷ 20 U.S.C.A. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); COMAR 13A.05.01.05A.

²⁰⁸ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

²⁰⁹ See SOF #14.

²¹⁰ 20 U.S.C.A. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); COMAR 13A.05.01.05C(2)(b).

²¹¹ 20 U.S.C.A. § 1414(b)(3)(A)(5); 34 C.F.R. § 300.304(c)(1)(v); COMAR 13A.05.01.05C(2)(b).

²¹² 20 U.S.C.A. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); COMAR 13A.05.01.05C(1)(b).

²¹³ See *E.P.*, 2017 WL 3608180, at *28.

relies upon the omission of one area of assessment, her disagreement with the results, and her dissatisfaction with the recommendations. In attempting to challenging the WCPS' evidence, it was incumbent upon the Parent to present evidence of a flawed evaluation process by failing to follow regulatory requirements, or that the WCPS failed to investigate an area of suspected disability related to the education context with little or no explanation why. She did not do so. The WCPS established that it complied with the law as to the occupational therapy evaluation and the Parent did not present evidence to the contrary.

The Speech/Language Assessment

██████████ has a ██████████ in communication disorders and a ██████████ ██████████ in speech language pathology. She holds a certificate of clinical competence through the American Speech Language Hearing Association (ASHA). She is licensed to practice speech pathology in Maryland. ██████████ has worked as a speech language pathologist in the school setting for twenty-four years and has worked for the WCPS for thirteen years. She conducts between thirty-five and fifty speech/language assessments per year and has experience conducting assessments with children between two and eighteen years of age. I accepted ██████████ ██████████ as an expert in speech language pathology in the educational setting, without objection.

██████████ conducted a speech/language assessment of the Student to evaluate his receptive language (understanding language spoken to him), expressive language (how well the Student is able to express himself with the language skills he possesses), pragmatics (social language skills), and articulation skills (how he pronounces sounds). She testified that the WCPS uses standardized assessments to evaluate communication needs in the educational setting.

██████████ reviewed the Student's prior assessments, including the assessment she gave him in 2020. She conducted an informal observation of the Student to evaluate his language

and conversation skills in a one-on-one setting with her and did not identify any areas of concern. [REDACTED] explained that she then gave the Student four assessments in total: three language assessments and one articulation assessment. She testified that, because the Student did well on the assessments, and displayed scores in the average to above average range, the testing took longer as the Student demonstrated more skills.

[REDACTED] administered all aspects of the PPVT-5 and CASL-2 assessments. She administered only two of four scales in conducting the OWLS-II assessment pertaining to listening comprehension and oral expression. She testified that she did not use the scales relating to reading comprehension and written expression because those areas would be addressed by other assessors.²¹⁴ [REDACTED] administered all aspects of the GFTA-3 assessment for articulation. She prepared a report documenting her evaluation, in which she deferred specific recommendations to the IEP team.²¹⁵

The Parent challenged [REDACTED] assessments on two bases. First, she criticized [REDACTED] omission of the reading comprehension and written expression scales from the OWLS-II assessment.²¹⁶ The Parent asserted that [REDACTED] “failed to use best practice, clinical judgment, and ethical responsibility to report that all subscales were not conducted” and that [REDACTED] summary of the results of this assessment “gives a misleading and unethical impression as it states ‘[the Student’s] performance on the OWLS-II indicated **overall language skills** in the average range.’”²¹⁷ The Parent wrote that because all four subscales of the test were not conducted, [REDACTED] conclusion was not “complete, ethical, accurate, or factual.”²¹⁸

²¹⁴ [REDACTED] assessed these areas in implementing the WIAT-IV assessment with the Student. *See* FOF #82-84.

²¹⁵ *See* Jt. Ex. 7.

²¹⁶ *See* Jt. Ex. 21, pp. 4-5.

²¹⁷ Jt. Ex. 21, p. 5 (emphasis in original).

²¹⁸ Jt. Ex. 21, p. 5.

██████████ credibly defended her position on this point. She noted that the protocol for the OWLS-II does not require that all four scales be administered and explained why she found it appropriate not to administer the scales relating to reading comprehension and written expression. She documented the results of the listening comprehension and oral expression scales in her report and noted the overall oral language composite score.²¹⁹ Her statement regarding the Student’s “overall language score” on the OWLS-II in the summary section of her report is followed by a specific reference to the two scales that were completed.²²⁰ I found nothing about her report to be misleading or unethical. I conclude that that ██████████ appropriately conducted this assessment and faithfully reported the results.

The Parent’s second challenge of ██████████ assessment related to the Student’s scores on the CASL-2. While ██████████ conceded that the result of the grammaticality judgment test subtest was statistically significant, she disagreed with the Parent’s assertions that it would be a best practice to report that deviation and that she was required to report it by ASHA, her credentialing authority. ██████████ explained that upon identifying that deviation, she used her clinical judgment to analyze the score in comparison with the Student’s prior results as well as his current results on related subtests. She credibly explained that, in conducting that analysis, she found that the Student either made gains in those areas between 2020 and 2023, or his skills remained the same. She further testified that an analysis of the related tests on that skill demonstrated that the Student possessed the skill.²²¹ I am unpersuaded by the Parent’s arguments on this point and conclude that this part of the assessment, and the evaluation of the scoring, was appropriate.

²¹⁹ See Jt. Ex. 7, p. 4.

²²⁰ See *id.*, p. 8.

²²¹ See FOF #60-66.

The WCPS demonstrated by a preponderance of the evidence that [REDACTED] conducted the speech language assessments in accordance with the statutory and regulatory requirements.²²² [REDACTED] used a variety of assessment tools and strategies in gathering information and did not rely on any single measure or assessment in identifying the Student's skills in receptive language, expressive language, pragmatics, and articulation skills. [REDACTED] [REDACTED] is appropriately trained and knowledgeable to conduct speech language evaluations of students in accordance with the requirements of the IDEA and federal and state regulations.²²³ [REDACTED], through her testimony, demonstrated that the assessments given were technically sound instruments used to assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors,²²⁴ that they were administered in accordance with the manufacturer's instructions,²²⁵ and that the assessments are valid and reliable for the purposes for which they were used.²²⁶ The Parent made no assertion, nor do I find, that the speech and language assessments were selected or conducted in a racially or culturally discriminatory fashion.²²⁷ It is undisputed that the psychological assessments were conducted in the Student's native language.²²⁸ Based on my review of the report and the credible testimony of [REDACTED], I conclude that the speech and language assessments that she conducted are valid and reliable for the purposes for which they were used.²²⁹

²²² 20 U.S.C.A. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b), (c); COMAR 13A.05.01.05.

²²³ 20 U.S.C.A. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); COMAR 13A.05.01.05C(2)(b).

²²⁴ 20 U.S.C.A. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); COMAR 13A.05.01.05C(1)(a).

²²⁵ 20 U.S.C.A. § 1414(b)(3)(A)(5); 34 C.F.R. § 300.304(c)(1)(v); COMAR 13A.05.01.05C(2)(b).

²²⁶ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

²²⁷ 20 U.S.C.A. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); COMAR 13A.05.01.05A.

²²⁸ 20 U.S.C.A. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); COMAR 13A.05.01.05C(1)(b).

²²⁹ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

The Educational Assessments

The WIAT-IV

██████████ has a ██████████ in special education and a ██████████ in psychology and special education. She has been employed by the WCPS for thirty-two years and was a classroom special education teacher for thirty years for sixth and seventh grades. She has been a special education specialist with WCPS for two years. She was originally trained to conduct special education testing while she was an undergraduate and again in graduate school and has attended numerous trainings on conducting testing throughout her career in relation to her employment with WCPS. ██████████ conducts an average of 100 evaluations per year. I accepted ██████████ as an expert in the area of special education, without objection.

██████████ explained that the purpose of an educational evaluation in the special education context is to obtain a “snapshot” of a child to identify present levels, both strengths and weaknesses, to be addressed in the development of the IEP.²³⁰ She administered the WIAT-IV to the Student at the request of the special education supervisors. ██████████ stated that she has administered this test “hundreds” of times.²³¹ In conducting the WIAT-IV with the Student, she was asked to, and did, focus on his general reading skills, his math skills, and his written language skills.

██████████ testified that the assessor has discretion to decide which subtests of the WIAT-IV should be administered to a child. She explained that she did not use the alphabet writing and sentence writing fluence subtests with the Student, as he was in fifth grade at the time of the assessment and those subtests are generally used with children in lower grade levels. She also did not administer the subtests related to oral language and expressive language,

²³⁰ Tr., Vol. 1, p. 180.

²³¹ *Id.*, p. 182.

because those skills would be assessed by the speech language pathologist. [REDACTED] noted she did not want her assessments to overlap with those of another assessor and she wanted to avoid test fatigue for the Student. She testified that there were no subtests that should have been used that she did not use with the Student.

On cross examination, [REDACTED] clarified that the WIAT-IV testing that she conducted with the Student assessed information that can be used to determine if the Student had specific learning disabilities in math, written expression, and reading comprehension. The Parent asked [REDACTED] where the [REDACTED] index score and descriptor range was identified in her report. In response, [REDACTED] acknowledged that a [REDACTED] index score can be calculated as part of the testing but testified that she did not include it in her report. She explained that, instead of considering that score, the IEP team would evaluate the scores related to the reading subtests compared with the scoring of the Student's cognitive abilities for purposes of considering [REDACTED].

[REDACTED] further acknowledged that she did not include a total achievement score and range for the Student's participation in the WIAT-IV. She explained that a total achievement score would not have been helpful to the IEP team, because it does not identify strengths and weaknesses; instead, the scoring needs to be broken down into the three sections as requested to inform the IEP process. The Parent inquired as to why [REDACTED] did not administer certain subtests related to spelling; [REDACTED] explained that the Student scored average on the orthographic processing subtest, indicating that he had the skill, so further exploration of that issue was, therefore, not warranted.

The Parent's challenges to [REDACTED] decisions not to use certain subtests in conducting the WIAT-IV assessment, both as stated in writing²³² and explored in cross

²³² See Jt. Ex. 21, p. 3.

examination, do not persuade me that ██████ failed to properly conduct the testing. She explained her use of discretion in her testimony, and I found her explanations credible and reasonable. I am further unpersuaded by the Parent’s challenges to the reporting of scores as stated in writing²³³ and discussed in cross examination. Again, these arguments do not establish that the WCPS failed to comply with any of the statutory and regulatory requirements.

I find that the WCPS has demonstrated by a preponderance of the evidence that ██████ ██████ conducted the WIAT-IV educational assessment in accordance with the statutory and regulatory requirements.²³⁴ While she administered only one assessment, she used a variety of subtests within that assessment in gathering information and did not rely on any single measure or subtest.²³⁵ Moreover, this educational assessment is viewed as a whole with the results of the CTOPP-2 discussed below. ██████ used technically sound instruments to assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.²³⁶ ██████ noted in her report that her findings did not reflect that the testing was conducted in a racially or culturally discriminatory fashion.²³⁷ Based on my review of the report and the credible testimony of ██████, I conclude that the assessment that she conducted is valid and reliable for the purposes for which it were used.²³⁸ ██████ testified regarding her considerable training and knowledge in conducting the WIAT-IV assessment.²³⁹ She credibly testified that the assessment was administered in accordance with the manufacturer’s

²³³ See *id.*, pp. 3-4.

²³⁴ 20 U.S.C.A. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b), (c); COMAR 13A.05.01.05.

²³⁵ 20 U.S.C.A. § 1414(b)(2)(A), (B); 34 C.F.R. § 300.304(b)(1), (2); COMAR 13A.05.01.05B(2), (3).

²³⁶ 20 U.S.C.A. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); COMAR 13A.05.01.05C(1)(a).

²³⁷ 20 U.S.C.A. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); COMAR 13A.05.01.05A.

²³⁸ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

²³⁹ 20 U.S.C.A. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); COMAR 13A.05.01.05C(2)(b).

instructions.²⁴⁰ It is undisputed that the WIAT-IV assessment was conducted in the Student's native language.²⁴¹

The CTOPP-2

██████████ has a ██████████ in special education and a ██████████ in elementary education. She is currently finishing her ██████████ in educational leadership at ██████████. She taught ██████████ special education courses at ██████████ ██████████ for approximately six years and stopped teaching at that level to focus on finishing her ██████████ course work. She has been a teacher for twenty-seven years and has been employed by the WCPS for twenty-five years. She taught for five years in the general education setting and has taught in the elementary and middle school settings. She has been a special education specialist for four years and served as a special education case manager for fifteen years. In both of those roles, she has conducted evaluations, but does so less often now than when she was a case manager. She has administered the CTOPP-2 assessment approximately twelve to fifteen times in the last two to three years. I accepted ██████████ as an expert in the area of special education, without objection.

██████████ testified that the CTOPP-2 assessment is a test of chronological processing to identify how a child breaks apart syllables and represents sounds, and measure how a child can put together and manipulate sounds. She administered this assessment to the Student as part of evaluating him for ██████████. The CTOPP-2 is comprised of twelve subtests. ██████████ explained that three of the subtests are appropriate for children aged four to six years; therefore, she did not use those subtests with the Student. She implemented the other nine subtests and followed all testing protocols for the assessment.

²⁴⁰ 20 U.S.C.A. § 1414(b)(3)(A)(5); 34 C.F.R. § 300.304(c)(1)(v); COMAR 13A.05.01.05C(2)(b).

²⁴¹ 20 U.S.C.A. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); COMAR 13A.05.01.05C(1)(b).

On cross-examination, ██████ testified that she did not report a significant deviation in scores in her report and denied that it is best practice to do so within the WCPS. She explained that the WCPS evaluates specific learning disability based on a discrepancy model, which evaluates a child's ability level versus their output, or stated differently, their intelligence quotient compared against their educational scores. She testified that the IEP team looks for outliers in scores to identify areas of impact. She further explained that the IEP team convenes a reevaluation meeting, after the assessments have been completed, and considers all of the data in total. A discrepancy in the score of one assessment, alone, does not signify an area of impact.

I find that the WCPS has demonstrated by a preponderance of the evidence that ██████ ██████ conducted the CTOPP-2 educational assessment in accordance with the statutory and regulatory requirements.²⁴² While she administered only one assessment, she used a variety of subtests within that assessment in gathering information and did not rely on any single measure or subtest.²⁴³ Moreover, this educational assessment is viewed as a whole with the results of the WIAT-IV discussed above. ██████ used technically sound instruments to assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.²⁴⁴ ██████ noted in her report that her findings did not reflect that the testing was conducted in a racially or culturally discriminatory fashion.²⁴⁵ Based on my review of the report and the credible testimony of ██████, I conclude that the assessment that she conducted is valid and reliable for the purposes for which it were used.²⁴⁶ ██████ testified regarding her considerable training and knowledge in conducting the CTOPP-2 assessment.²⁴⁷ She credibly

²⁴² 20 U.S.C.A. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b), (c); COMAR 13A.05.01.05.

²⁴³ 20 U.S.C.A. § 1414(b)(2)(A), (B); 34 C.F.R. § 300.304(b)(1), (2); COMAR 13A.05.01.05B(2), (3).

²⁴⁴ 20 U.S.C.A. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); COMAR 13A.05.01.05C(1)(a).

²⁴⁵ 20 U.S.C.A. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); COMAR 13A.05.01.05A.

²⁴⁶ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

²⁴⁷ 20 U.S.C.A. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); COMAR 13A.05.01.05C(2)(b).

testified that the assessment was administered in accordance with the manufacturer's instructions.²⁴⁸ It is undisputed that the CTOPP-2 was conducted in the Student's native language.²⁴⁹

The Psychological Evaluation

██████████ has a ██████████ in school psychology and a ██████████ with a major in psychology and a minor in family studies. She is a certified school psychologist in ██████████, since 2015, and in ██████████, since 2017. She taught preschool in between semesters and school years while she was an undergraduate and assisted a college professor by proctoring a course entitled "Introduction to Exceptional Children." She served as a graduate assistant for a cognitive assessment course and assisted in the administration of cognitive assessments and checked protocols for accuracy. ██████████ has been employed by the WCPS since 2018. I accepted ██████████ as an expert in school psychology, without objection.

██████████ initially intended to conduct rating scales related to ██████████ and ██████████ with the Student to identify how behaviors related to those diagnoses might be affecting him in the educational setting. Upon learning of the request from the Parent to conduct rating scales for executive functioning, she agreed to do so, as she determined that executive functioning was relevant to the Student in the education context.

██████████ began her assessment by reviewing the Student's educational file, including prior IEPs and four previous evaluations. She obtained teacher input by sending a questionnaire to the Student's teachers for narrative information used to compare with scoring on the rating scales. She conducted an observation of the Student in the classroom to see how he functioned in the learning environment, identify any adverse educational impacts, observe how he interacted

²⁴⁸ 20 U.S.C.A. § 1414(b)(3)(A)(5); 34 C.F.R. § 300.304(c)(1)(v); COMAR 13A.05.01.05C(2)(b).

²⁴⁹ 20 U.S.C.A. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); COMAR 13A.05.01.05C(1)(b).

with peers, and note any on- and off-task behaviors.²⁵⁰ [REDACTED] sent three ratings scales to the Parent, two of the Student's classroom teachers, and the Student's [REDACTED] teacher: the [REDACTED], to assess behaviors related to [REDACTED]; the Conners-4, to assess behaviors related to [REDACTED]; and the CEFI, to assess executive functioning skills. All four participants returned the rating scales to [REDACTED]. Upon receiving the scoring for each of the scales, [REDACTED] evaluated the scores and included an analysis of the data in her report. [REDACTED] testified that her testing demonstrated that the Student exhibits more intense behaviors in some environments than others. She further explained that behaviors can vary based on the circumstances in which a child is evaluated or observed.

On cross-examination, [REDACTED] agreed with the Parent that a prior cognitive assessment of the Student in 2018 showed a significantly lower result than other cognitive assessments. She noted that in that assessment, the Student scored an eighty-seven on the Score Intelligence Scale for Children; he scored 117 in 2021 and 123 in 2023.²⁵¹ [REDACTED] noted that she addressed that discrepancy in her report. When asked about significant deviations, [REDACTED] testified that in interpreting cognitive assessments, a twenty-point difference would be significant. However, she noted that there could be a variety of reasons for the differences presented by the Student's scores, including the Student's comfort level with the examiner. She explained that research suggests that a person's intelligence quotient stabilizes between the ages of eight and nine years old.²⁵² [REDACTED] found the 2018 score to be an outlier in comparison with the two more recent scores.

²⁵⁰ I find that [REDACTED] observation of the Student in the learning environment comports with the requirement found at COMAR 13A.05.01.05B(5)(a), which dictates that an observation by a member of the IEP team is required for determination of an SLD.

²⁵¹ See Jt. Ex. 6, pp. 3-6; Tr., Vol. 1, pp. 146-47.

²⁵² The Student turned six years old in 2018, he turned nine years old in 2021, and he turned eleven years old in 2023.

requirements.²⁵⁸ ██████ used a variety of assessment tools and strategies in gathering information and did not rely on any single measure or assessment in identifying the Student's behaviors related to his diagnoses in the educational setting and making her recommendation to the IEP team.²⁵⁹ ██████ is appropriately trained and knowledgeable to conduct psychological evaluations of students in accordance with the requirements of the IDEA and federal and state regulations.²⁶⁰ ██████, through her testimony, demonstrated that the assessments given were technically sound instruments used to assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors,²⁶¹ that they were administered in accordance with the manufacturer's instructions,²⁶² and that the assessments are valid and reliable for the purposes for which they were used.²⁶³ The Parent made no assertion, nor do I find, that the psychological assessments were selected or conducted in a racially or culturally discriminatory fashion.²⁶⁴ It is undisputed that the psychological assessments were conducted in the Student's native language.²⁶⁵

Summary

The evidence in record before me demonstrates that the WCPS personnel prepared detailed and insightful assessments. Each assessor included a complete record of the results of the instruments used, included a detailed analysis of the results of their assessments, employed a clear structure for presenting information in their assessments, and included a detailed description of the instruments used and their purposes. I credit the knowledgeable and detailed

²⁵⁸ 20 U.S.C.A. § 1414(b)(2), (3); 34 C.F.R. § 300.304(b), (c); COMAR 13A.05.01.05.

²⁵⁹ 20 U.S.C.A. § 1414(b)(2)(A), (B); 34 C.F.R. § 300.304(b)(1), (2); COMAR 13A.05.01.05B(2), (3).

²⁶⁰ 20 U.S.C.A. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); COMAR 13A.05.01.05C(2)(b).

²⁶¹ 20 U.S.C.A. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3); COMAR 13A.05.01.05C(1)(a).

²⁶² 20 U.S.C.A. § 1414(b)(3)(A)(5); 34 C.F.R. § 300.304(c)(1)(v); COMAR 13A.05.01.05C(2)(b).

²⁶³ 20 U.S.C.A. § 1414(b)(3)(a)(iii); 34 C.F.R. § 300.304(c)(1)(iii); COMAR 13A.05.01.05B(2), (3); COMAR 13A.05.01.05C(1)(a).

²⁶⁴ 20 U.S.C.A. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); COMAR 13A.05.01.05A.

²⁶⁵ 20 U.S.C.A. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); COMAR 13A.05.01.05C(1)(b).

testimony of these expert witnesses regarding the information they properly included in their respective assessments.

The WCPS demonstrated that all six assessors used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the Parent, that assisted the IEP team in determining the Student's eligibility, educational disability, and the content of the Student's IEP.²⁶⁶ None of the assessors used any single measure or assessment as the sole criterion for determining whether the Student was a child with a disability or determining an appropriate educational program for the Student. Further, these assessors used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.²⁶⁷

In addition, the WCPS met its obligation to ensure that the assessments and other evaluation materials:

- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
- (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
- (iii) are used for purposes for which the assessments or measures are valid and reliable;
- (iv) are administered by trained and knowledgeable personnel; and
- (v) are administered in accordance with any instructions provided by the producer of such assessments.^[268]

Finally, the WCPS assessed the Student in all areas of suspected disability.^{269, 270}

²⁶⁶ 20 U.S.C.A. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); COMAR 13A.05.01.05B(2); *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06.

²⁶⁷ 20 U.S.C.A. § 1414(b)(2)(B)-(C); 34 C.F.R. § 300.304(b)(2), (3); COMAR 13A.05.01.05B(3), C.

²⁶⁸ 20 U.S.C.A. § 1414(b)(3)(A); *see also* 34 C.F.R. § 300.304(c)(1); *see also* COMAR 13A.05.01.05.

²⁶⁹ *See* FOF #3-7 (generally), #12 (FBA), #23 (OT), #42 (speech), #74, 90 (educational), and #99 (psychological).

²⁷⁰ 20 U.S.C.A. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4); *see also* COMAR 13A.05.01.05B(1).

As noted above, the critical question before me is not the *results* of the WCPS testing, or any action taken by the Student's IEP team after the evaluations were considered, but whether the evaluations were properly administered in accordance with the standards and requirements set forth above. In this case, the WCPS has established that the evaluations conducted by the WCPS were proper, comprehensive, and in compliance with applicable law. The Parent has presented no evidence, either through testimony, documentation, or expert opinion, that challenged the WCPS assessments or demonstrated that the assessments failed to meet the IDEA's procedural requirements.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the functional behavioral assessment, occupational therapy evaluation, speech/language assessments, educational assessments, and psychological evaluation of the Student conducted by the Washington County Public Schools between February and April 2023 were appropriate.²⁷¹ Therefore, I further conclude as a matter of law that the Washington County Public Schools should not be required to pay for Independent Educational Evaluations of the Student at public expense.²⁷²

ORDER

I **ORDER** that the Washington Count Public Schools' functional behavioral assessment, occupational therapy evaluation, speech/language assessments, educational assessments, and

²⁷¹ 20 U.S.C.A. § 1414(b); 34 C.F.R. § 300.303; 34 C.F.R. § 300.304; COMAR 13A.05.01.05; *E.P. ex rel. J.P. v. Howard County Public School System*, 2017 WL 3608180 (D. Md. Aug. 21, 2017), *aff'd per curiam*, 727 F. App'x 55 (4th Cir. June 19, 2018).

²⁷² 34 C.F.R. § 300.502(a)(1), (b)(2); COMAR 13A.05.01.14B(3)(a).

psychological evaluation were appropriate and that the Parent's request for Independent Educational Evaluations of the Student at public expense be **DENIED**.

July 8, 2024
Date Decision Mailed

Kristin E. Blumer
Administrative Law Judge

KEB/at
#212368

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision 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 appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

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

Copies Mailed and Emailed To:

[Redacted]

Brooke H. Gomulka, Esquire

[Redacted]

[Redacted]

[Redacted], 9th Floor

Baltimore, MD 21201

[Redacted]

**WASHINGTON COUNTY
PUBLIC SCHOOLS**

v.

[REDACTED]

PARENT,

ON BEHALF OF

[REDACTED]

STUDENT

**BEFORE KRISTIN E. BLUMER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE OF
ADMINISTRATIVE HEARINGS**

OAH No.: MSDE-WASH-OT-24-11232

FILE EXHIBIT LIST

I admitted the following exhibits jointly offered by the parties:

- Jt. Ex. 1: WCPS Notice of the Individualized Education Program (IEP) Team Decision, Prior Written Notice (PWN), Addendum to IEP, meeting date February 7, 2023
- Jt. Ex. 2: WCPS Meeting Minutes, meeting date February 7, 2023
- Jt. Ex. 3: WCPS Notice and Consent for Assessments, December 6, 2022
- Jt. Ex. 4: WCPS Notice and Consent for Assessments, signed February 15, 2023
- Jt. Ex. 5: WCPS Occupational Therapy Re-Evaluation, assessment date February 23, 2023
- Jt. Ex. 6: WCPS Psychological Evaluation, assessment date April 17, 2023
- Jt. Ex. 7: WCPS Speech/Language Assessment, assessment on various dates in March and April, 2023
- Jt. Ex. 8: WCPS Functional Behavioral Assessment (FBA), assessment date February 17, 2023
- Jt. Ex. 9: WCPS Educational Assessment, Comprehensive Test of Phonological Processing Second Edition (CTOPP-2), assessment date April 24, 2023
- Jt. Ex. 10: WCPS Educational Assessment, Weschler Individual Achievement Test, fourth edition (WIAT-IV), assessment date April 11, 2023

- Jt. Ex. 11: WCPS Notice of the IEP Team Decision, PWN, Addendum to IEP, meeting date May 4, 2023
- Jt. Ex. 12: WCPS Meeting Minutes, meeting dates May 31, 2023 and June 1, 2023
- Jt. Ex. 13: WCPS Meeting Minutes, meeting date May 4, 2023
- Jt. Ex. 14: Student's IEP, May 31, 2023
- Jt. Ex. 15: ██████████ (██████), Initial Occupational Therapy Evaluation, October 30, 2023
- Jt. Ex. 16: ████████ Progress Note, February 27, 2024
- Jt. Ex. 17: WCPS Notice of the IEP Team Decision, PWN, Addendum to IEP, meeting date March 20, 2024
- Jt. Ex. 18: Student's IEP, March 20, 2024
- Jt. Ex. 19: Parent's IEE Request, March 20, 2024
- Jt. Ex. 20: Parent's Amended IEE Requests, March 27, 2024
- Jt. Ex. 21: Parent's Explanation of Amended IEE Requests, March 29, 2024
- Jt. Ex. 22: WCPS IEE Denial Letter, April 5, 2024
- Jt. Ex. 23: Joint Stipulations of Fact, undated

The WCPS did not offer any other exhibits for admission into evidence.

The Parent did not offer any other exhibits for admission into evidence.