

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

DECISION

COVER SHEET

DUE PROCESS SPECIAL EDUCATION HEARING

FILE NUMBER:	3093/11-12AS
PETITIONER/SCHOOL DISTRICT (LEA):	Mid-West School District
SCHOOL DISTRICT COUNSEL:	Sharon O'Donnell, Esquire
STUDENT:	M.S.
RESPONDENT/PARENTS:	Parents
COUNSEL FOR STUDENT/PARENT	Phillip Drumheiser, Esquire
INITIATING PARTY:	School District
DATE OF DUE PROCESS COMPLAINT:	April 27, 2012
DATE OF HEARING:	July 18 and 19, 2012
PLACE OF HEARING:	Mid-West High School
OPEN vs. CLOSED HEARING:	Closed
STUDENT PRESENT:	No
RECORD:	Verbatim-Court Reporter
DECISION TYPE:	Electronic
DUE DATE FOR DECISION:	August 20, 2012
HEARING OFFICER:	James Gerl, Certified Hearing Official

## **DECISION**

### **DUE PROCESS HEARING**

File No.: 3093/11-12AS

### **PRELIMINARY MATTERS**

Two prehearing conferences by telephone conference call were convened in this case. The first prehearing conference was convened on May 8, 2012. The second prehearing conference was convened on May 15, 2012. As a result of said conferences, a Prehearing Conference Order was entered herein. Said Order is incorporated herein by reference.

Prior to the hearing, counsel for the School District filed a motion to extend the hearing officer's decision deadline. The motion was unopposed. The motion was granted, and the hearing officer's decision deadline was extended to August 20, 2012.

Prior to the hearing, counsel for the parties filed a joint prehearing memorandum. Said memorandum contains numerous stipulations of fact, and it defines the issue presented for purposes of this due process hearing. Said

memorandum also contains information concerning exhibits and witnesses. The parties' joint prehearing memorandum is incorporated by reference herein.

Subsequent to the hearing, both parties filed written briefs and proposed findings of fact. All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Personally identifiable information, including the names of parties and similar information is provided on the cover sheet hereto which should be removed prior to distribution of this decision to the public. FERPA, 20 U.S.C. § 1232(g) and IDEA § 617(c).

## **ISSUE PRESENTED**

The issue presented in the due process hearing, as identified by the parties in the prehearing conferences and confirmed in their joint prehearing memorandum, is as follows:

1. Should the parents' request for an independent educational evaluation at public expense be approved?

## **FINDINGS OF FACT**

Based upon the parties' stipulations of fact as contained in their joint prehearing memorandum, the hearing officer makes the following findings of fact:

1. The student's date of birth is [redacted]. (Stip-1). (References to stipulations of fact in the parties' joint prehearing memorandum are hereby referenced as "Stip-1," etc.).
2. The student is presently enrolled in the school district. (Stip-3)
3. Due to academic and behavior concerns, the student's parents requested that [the student] be evaluated by the district to determine whether [the student] was eligible for special education services. (Stip-4)

4. An initial evaluation report was completed by the school district on May 18, 2011, and it concluded that the student was eligible for special education services in the eligibility category of other health impairment. (Stip-5)

5. The school district issued an IEP dated June 8, 2011 and the parents approved the IEP by signing a Notice of Recommended Educational Placement which was also dated June 8, 2011. (Stip-6)

6. The Notice of Recommended Educational Placement dated June 8, 2011 changed the student's placement to a new elementary school that the school district stated would provide better access to behavior and math support services. (Stip-7)

7. A second IEP dated October 11, 2011 was issued by the school district and the parents approved the IEP in a Notice of Recommended Educational Placement on October 11, 2011. (Stip-8)

8. The school district completed a functional behavioral assessment and drafted a positive behavior support plan for the student dated December 15, 2011. (Stip-9)

9. The parents approved the positive behavior support plan by signing a Notice of Recommended Educational Placement dated December 22, 2011. (Stip-10)

10. The parents provided to the district a neuropsychological evaluation report dated January 5, 2012 which was done by a clinical neuropsychologist. (Stip-11)

11. The parents requested a reevaluation for the student and the district issued a Permission to Evaluate form dated January 6, 2012, which the parents approved and signed on January 30, 2012. (Stip-12)

12. The parents requested an IEP meeting for the student in February 2012, and the district rejected their request and issued a Notice of Recommended Educational Placement dated March 1, 2012 noting the district's refusal to hold an IEP meeting. (Stip-13)

13. The district's reevaluation report is dated March 23, 2012. (Stip-14)

14. A reevaluation meeting was held on March 28, 2012. (Stip-15)

15. The parents disagreed with the reevaluation report and requested an independent educational evaluation. (Stip-16)

16. The school district rejected the parents' request for an independent educational evaluation at public expense and filed a Due Process Complaint on April 27, 2012 to attempt to prevent the parents from obtaining an independent educational evaluation at public expense. (Stip-17) (NOTE: there appears to be a typo in the prehearing memorandum Stipulation 17 concerning the word "expense," which is corrected herein. In addition, Stipulation 2 contains personally identifiable information and has been omitted.)

Based upon the evidence in the record, the hearing officer makes the following findings of fact:

17. The initial evaluation of the student conducted by the school district on May 18, 2011 was a wide ranging evaluation that considered both behavior and academic skills. The evaluator considered the input provided by the mother. The mother was concerned about the student's lack of focus and [the student's] poor math skills. The evaluation included observations of the student by the school counselor, the school psychologist, a school psychologist intern and the student's 3rd grade teacher. The evaluator considered the student's grades and school assessments. In addition, the school psychologist administered the Wechsler Intelligence Scale for Children (an intelligence test). This assessment revealed that the student had a full scale IQ of 90 which was within average range. The school psychologist also administered the Wechsler Individual Achievement Test (an academic achievement test) to the student. The evaluator noticed that some of [the student's] scores in the area of mathematics were low. The evaluator administered two more math assessments to the student, and the student performed better on the second and third math assessments. The evaluator also interviewed the student. The student's teacher completed the Adjustment Scales for Children and Adolescents and the Scale for Assessing Emotional Disturbance. The student's teacher and [the student's] mother rated the student using the Behavior Assessment System for Children (or BASC), and the student's adaptive behaviors were within the average range. The student's classroom teacher emphasized to the school psychologist that the student had

problems focusing. The student responded well when the teacher tried adaptations in the classroom to help [the student] focus. (SD-1; T of school district school psychologist) (References to exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "SD-1," etc. for the school district exhibits and "HO-1," etc. for the hearing officer exhibits; references to testimony at the hearing is hereafter designated as "T".)

18. The IEP developed by the school district for the student on October 11, 2011 placed [the student] in the regular education classroom for 93% of the school day for fourth grade. The IEP provided for specially designed instruction and goals to help the student with [the student's] focus and provided additional support during [the student's] math class. The student began the school day for the first 15 minutes in the emotional support classroom and ended the day for 15 minutes in the emotional support classroom. The learning support instructional assistant was available to help the student during math class. The IEP includes the related service of counseling with the school social worker for thirty minute sessions, once every cycle. The IEP references a behavior support plan that was to be adopted later. The IEP states that the school district special education director was designated as the "single point of contact" for the mother to express concerns about the student's IEP. (P-4)



19. The school district conducted a functional behavioral assessment of the student on December 15, 2011. Based upon the functional behavioral assessment, the school district developed a positive behavior support plan designed to address the student's social and behavioral issues. (P-7, P-8; T of school district's school psychologist)

20. The student's parents obtained a neuropsychological assessment of the student on December 14, 2011 and January 5, 2012. The neuropsychologist concluded that the student had a nonverbal learning disorder and an adjustment reaction with mixed disturbance of emotions and conduct. The neuropsychologist noted that the family history is remarkable for significant problems including aggression, depression, anxiety or adjustment problems, panic disorder and arrests/incarceration. Some of the test scores obtained by the neuropsychologist were invalid. The evaluator made no specific academic recommendations because there was no academic testing done as part of the assessment. The evaluator recommended a follow-up evaluation and development of an intervention plan by a specific named school psychologist. The report contains other recommendations based upon general characteristics of children with nonverbal learning disabilities. (P-11; T of Parent's expert school psychologist.)

21. The student's mother provided the report of the neuropsychologist's evaluation of the student to the school district's school psychologist and special

education director but not to the other members of the IEP team. The student's mother felt that the report was sensitive and did not want other staff of the school district to see the report. (T of school district's school psychologist)

22. As a result of the mother providing certain members of the IEP team with the report of the neuropsychological assessment of the student, the school district conducted a reevaluation of the student. (T of school district's school psychologist; T of special education director)

23. To conduct the reevaluation on March 23, 2012, the school district's school psychologist conducted a records review of the previous school district assessments which were less than a year old. The school psychologist concluded that no new data were necessary. In addition, the school district's school psychologist obtained updated parent input and updated teacher input. The school district's school psychologist reviewed the functional behavioral assessment and the positive behavior support plan that the school district had developed for the student with the assistance of the intermediate unit. In addition, the school district's school psychologist considered classroom based assessments and the student's current grades. The evaluator also considered the observations by the student's regular education classroom teacher, by the learning support teacher, by [the student's] emotional support teacher and by the school social worker. The student's teachers and providers all felt that the student was making progress and that the student's current specially

designed instruction and IEP as well as [the student's] positive behavior support plan were adequately meeting [the student's] needs academically, behaviorally and socially. The school district also completed an addendum to the reevaluation report concluding that the student did not have a specific learning disability. (SD-4; T of school district's school psychologist; P-20; SD-6)

24. The school district's school psychologist summarized the report of the neuropsychologist and concluded that the student had some characteristics of a nonverbal learning disability, but that [the student] did not have other characteristics. One characteristic of a nonverbal learning disability that the student did not demonstrate was problems with visual perception. The student received average to above average scores in interpreting charts, tables and graphs when the school district's school psychologist performed the additional math assessments on [the student]. [The student] did not have problems with visual perceptual issues. The school district school psychologist noted in her review of the evaluation report that the school district had already implemented most of the recommendations made by the neuropsychologist in the student's educational program. The school district school psychologist concluded that the student was progressing within the regular education environment with the supports and services in [the student's] IEP and that the student's social needs were being addressed by [the student's] work with the social worker and the emotional support teacher as well as by [the student's] positive

behavior support plan. The evaluator encouraged the IEP team to focus on the student's needs rather than [the student's] diagnosis. (SD-4; T of school district's school psychologist)

25. On or about March 28, 2012, there was a meeting of the student's IEP team to discuss the school district's reevaluation report. At said meeting, the student's mother and her attorney expressed concerns that the student's disability category of eligibility needed to be changed from other health impairment to specific learning disability based upon the report of the neuropsychologist who had evaluated the student. The school district school psychologist expressed concerns about the evaluation of the neuropsychologist. (T of school district's special education director; T of school district school psychologist)

26. On April 19, 2012, the student's parents sent a letter to the school district's special education director requesting an independent educational evaluation at public expense. In said letter, the student's parents described their concerns that the disability category of eligibility on the student's IEP was incorrect and that it should be changed to specific learning disability based upon the diagnosis made by the neuropsychologist. The parents noted that the student's grades in spelling dropped from C to D in the third marking period and in social studies from B to D. From this information, the parents concluded that the student continued to struggle academically. The parents requested an independent educational evaluation be

conducted by a specific school psychologist, the same school psychologist named in the report of the neuropsychologist. (P-21)

27. The student's mother felt that the school district reevaluation was not complete. She wanted the school district to incorporate into the student's IEP the diagnosis and recommendations made by the neuropsychologist. In particular, the student's mother wanted [the student's] disability category of eligibility changed from other health impaired to specific learning disability. (T of the student's mother; P-21)

28. On April 24, 2012, the school district's special education director sent a letter to the student's parents. In said letter, the special education director declined to provide an independent educational evaluation at public expense. Concerning the category of disability, said letter stated that "identification does not drive placement in this district and... [the student] is getting all the learning support services [the student] would get if [the student] was identified a (sic) having a specific learning disability." In addition, said letter noted that the student had been tested a number of times within the last year. The school district refused the request for an independent educational evaluation at public expense because it concluded that it was not necessary. Prior to sending said letter on April 24, 2012, the school district's special education director conferred with the school psychologist and other members of the student's IEP team. (SD-7; T of school district's special education director)

29. On April 26, 2012, the student's parents sent another letter to the school district's special education director repeating the arguments of the school district in denying their request for an independent educational evaluation at public expense. (P-24; T of the student's mother)

30. The unfinished draft report of the independent educational evaluation conducted by the parent's expert school psychologist on May 19 and 26, 2012 concluded that the student's disability category should be changed. The reason for this conclusion was that it would help make the mother, who was an anxious person, feel included. The evaluator concluded that the student did not have ADHD. The report contains numerous recommendations, many of which were already in place for the student in the educational program developed for [the student] by the school district. The report of the evaluation that was introduced into evidence at the hearing was an unfinished draft. (P-31; T of the parents' expert school psychologist; T of school district special education director)

31. The student had a number of behavior incidents toward the end of the 2011-2012 school year. Many of them had a sexual component. [Redacted.] On two occasions, school district personnel reported the student's parents to the Children and Youth state agency as a result of inappropriate [redacted] conduct by the student. On April 25, 2012, an investigator interviewed the student [redacted]. The student admitted these behaviors. That complaint was later closed without adverse action. On

approximately May 22, 2012, the investigator investigated another incident which the student denied. (P-23; P-27; P-28; P-29; SD-9; T of student's mother)

32. The student's mother arranged for [the student] to receive private counseling beginning when [the student] was in 2nd grade. The private counseling continued once per week through the date of the due process hearing. The student's mother has not shared information about the private counseling that the student received with the school district. (T of student's mother)

33. The student's report card for the 2011-2012 school year contained the following final grades for [the student's] work in [the student's] regular education classroom: C in reading, D in writing/grammar, C in mathematics, D in spelling, C in social studies, B in science, and A's in art, physical education and music. (P-30)

34. At the time of the request for an independent educational evaluation, the student was making meaningful educational progress and the student's then-current specially designed instruction and IEP as well as [the student's] positive behavior support plan were adequately meeting [the student's] needs academically, behaviorally and socially. (Record evidence as a whole.)

35. Beginning in approximately October 2011 and extending through the end of the school year, the school district's special education director required that the student's mother communicate only with him concerning matters affecting the student's IEP. The school district perceived that the student's mother was making

too many demands upon school district staff and wanted to have one contact point so that all information shared would be the same. The school district did not attempt to meet with the parent first to attempt to resolve the issue or to limit the number of communications prior to announcing that the special education director would be the sole contact for IEP purposes at one of the arranged IEP team meetings. (T of school district's special education director; P-4)

### **CONCLUSIONS OF LAW**

Based upon the arguments of the parties, all of the evidence in the record, as well as legal research by the hearing officer, the hearing officer makes the following conclusions of law:

1. If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b); PP by Michael P & Rita P v. Westchester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, a school district must either pay for the evaluation or else request a due process hearing to prove that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2). If the final decision after a school district files a request for due process is that the school district's evaluation is appropriate, the parent still has a right to an



independent educational evaluation, but not at public expense. 34 C.F.R. § 300.300.502(b)(3); Warren G. by Tom G. v. Cumberland County School District, 190 F.3d 80, 31 IDELR 27 (3d Cir. 1999).

2. In conducting an evaluation, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child. It must use technically sound instruments to assess the child. The assessments must be conducted by trained and knowledgeable personnel and administered in accordance with any instructions provided by the producer. The child must be assessed in all areas related to the suspected disability on an initial evaluation. When conducting a reevaluation, a school district must review existing evaluation data including classroom based assessments and observations by a teacher and related service providers, and on that basis determine whether any additional data are needed to determine whether the student continues to be eligible as well as identify the child's special education and related services needs. IDEA § 614; 34 C.F.R. §§ 300.304 – 300.305; 22 Pa. Code §§ 14.123 – 14.124.
3. IDEA does not concern itself with labels, but whether a student with a disability is receiving a free and appropriate public education; a disabled child's IEP must be tailored to the unique needs of that particular child. Heather S. v. State of Wisconsin, 125 F.3d 1045, 26 IDELR 870 (7th Cir. 1997); Fort Osage

R-1 School District v. Sims ex rel. BS, 841 F.3d 996, 56 IDELR 282 (8th Cir. 2011). Regardless of the category of eligibility, each child with a disability is entitled to individually designed special education and related services. DB by LB v. Houston Independent School District, 48 IDELR 246 (D. Tex. 2007); Pohorecki v. Anthony Wayne Local Sch Dist 637 F.Supp.2d 547, 53 IDELR 22 (N.D. Ohio 2009). The child's identified needs, not the child's disability category determines the services that must be provided to the child. Maine Sch Administrative Dist No 56 v. Ms W ex rel KS 47 IDELR 219 (D. Maine 2007); Letter to Anonymous, 48 IDELR 16 (OSEP 2006); See also, analysis of comments (pertaining to federal regulations), 71 Fed. Register 156 at p. 46586, 46588 (OSEP August 14, 2006); In re Student With a Disability, 52 IDELR 239 (SEA WV 2009); Letter to Audin, 58 IDELR 51 (OSERS 2011); Letter To Brumbaugh 108 LRP 33562 (OSEP 2008).

4. Under IDEA, a medical practitioner, or other evaluator, may not simply prescribe special education or components of an IEP; rather, the IEP team must consider all relevant factors. Marshall Joint School District No. 2 v. CD by Brian and Traci D., 616 F.3d 632, 54 IDELR 307 (7th Cir. 2010); District of Columbia Public Schools 111 L.R.P. 76506 (SEA D.C. 2011).

5. The school district's reevaluation of the student on March 23, 2012 was appropriate. The parent is not entitled to an independent educational evaluation at public expense.

## **DISCUSSION**

Issue No. 1: Should the parents' request for an independent educational evaluation at public expense be approved?

The school district has filed this due process complaint alleging that its reevaluation of the student is appropriate. The parents contend that the school district reevaluation is not appropriate and requests an order requiring the school district to pay for an independent educational evaluation.

If a parent disagrees with a school district evaluation, the parent may request an independent educational evaluation at public expense. IDEA § 615(d)(2)(A); 34 C.F.R. § 300.502(b); PP by Michael P & Rita P v. Westchester Area School District, 585 F.3d 727, 53 IDELR 109 (3d Cir. 2009). When a parent requests an independent educational evaluation at public expense, a school district must either pay for the evaluation or else request a due process hearing to prove that its evaluation was appropriate. 34 C.F.R. § 300.502(b)(2). If the final decision after a school district files a request for due process is that the school district's evaluation is appropriate, the

parent still has a right to an independent educational evaluation, but not at public expense. 34 C.F.R. § 300.300.502(b)(3); Warren G. by Tom G. v. Cumberland County School District, 190 F.3d 80, 31 IDELR 27 (3d Cir. 1999).

In the instant case, the school district has met its burden of establishing that its reevaluation of the student was appropriate. The school district presented the credible and persuasive testimony of its school psychologist to the effect that she conducted a wide ranging reevaluation of the student looking at both behavior and academic skills. The school psychologist testified that she reviewed the existing data and determined that the testing from the previous evaluation, conducted approximately ten months earlier, was sufficient and that no additional testing was necessary. The school psychologist testified that she also considered the report of the neuropsychologist obtained by the student's parents, as well as the functional behavior assessment and the positive behavior support plan developed by the school district for the student. In addition, the reevaluation included observations of the student by [the student's] classroom teacher, [the student's] learning support teacher, [the student's] emotional support teacher, and the school social worker, and all of the teachers and related service providers felt that the student's current IEP, specially designed instruction and [the student's] positive behavior support plan were adequately meeting [the student's] needs academically, behaviorally and socially and that the student was progressing in [the student's] regular education classroom. The

school psychologist also considered parent input provided by the parent at a meeting with the school psychologist and the school district's special education director.

The testimony of the school psychologist with regard to the reevaluation of the student is corroborated by the documentary evidence consisting of the records of the reevaluation process for the student. The reevaluation report thoroughly documents the comprehensive reevaluation process described in the testimony of the school district's school psychologist.

The student's mother testified that she believed that the school district's reevaluation of the student was inappropriate. To the extent that the testimony of the parents' witnesses was inconsistent with the testimony of the school district's witnesses with regard to this point, the testimony of the school district's witnesses is more credible and persuasive than the testimony of the parents' witness.

The student's mother testified that the reason that she requested an independent educational evaluation was that she did not feel that the school district's reevaluation was complete because she wanted the school district to adopt the findings and diagnosis made by the neuropsychologist and change the student's category of disability for eligibility.

The parents' focus on the category of disability is misplaced. IDEA does not concern itself with labels, but whether a student with a disability is receiving a free and appropriate public education; a disabled child's IEP must be tailored to the unique needs of that particular child. Heather S. v. State of Wisconsin, 125 F.3d 1045, 26 IDELR 870 (7th Cir. 1997); Fort Osage R-1 School District v. Sims ex rel. BS, 841 F.3d 996, 56 IDELR 282 (8th Cir. 2011). Regardless of the category of eligibility, each child with a disability is entitled to individually designed special education and related services. DB by LB v. Houston Independent School District, 48 IDELR 246 (D. Tex. 2007); Pohorecki v. Anthony Wayne Local Sch Dist 637 F.Supp.2d 547, 53 IDELR 22 (N.D. Ohio 2009). The child's identified needs, not the child's disability category determines the services that must be provided to the child. Maine Sch Administrative Dist No 56 v. Ms W ex rel KS 47 IDELR 219 (D. Maine 2007); Letter to Anonymous, 48 IDELR 16 (OSEP 2006); See also, Analysis of Comments (pertaining to federal regulations), 71 Fed. Register 156 at p. 46586, 46588 (OSEP August 14, 2006); In re Student With a Disability, 52 IDELR 239 (SEA WV 2009); Letter to Audin, 58 IDELR 51 (OSERS 2011); Letter To Brumbaugh 108 LRP 33562 (OSEP 2008).

Accordingly, the parents' focus on the category of disability, and more particularly upon the nonverbal learning disability diagnosed by the neuropsychologist, is misplaced. All parties agree that the student is eligible for

special education and related services under IDEA. No further analysis of category of disability is necessary or relevant.

The parents' expert school psychologist, who prepared the independent educational evaluation for which the parents seek to be reimbursed, testified primarily that the student's category of disability should be changed to learning disability. The parents' school psychologist testified that the reason for his conclusion that the category of disability should be changed is that it would make the parent feel more included. The parents' school psychologist noted the strained relationship between the parent and the school district, and therefore recommended that the nonverbal learning disability diagnosis by the previous neuropsychologist be adopted by the school district and made the basis for the student's IEP. The reliance upon the category of disability by the school psychologist severely undermines the credibility of his testimony. A school psychologist should know that the category of disability is irrelevant after eligibility is established.

The parents cite no authority in their post-hearing brief for the proposition that a school district should change the category of disability in order to make a parent feel more included in the process. IDEA does not require such an action by a school district. Indeed, there is a danger if a school district were to pursue such an action that it might cause a parent, particularly if a parent were relatively unsophisticated, to

believe that services are determined based upon eligibility category. Such stereotyping of children with disabilities is the opposite of the consequence that was intended by Congress in passing IDEA. Students with disabilities are *individuals*.

Moreover, the focus on the eligibility category deflects attention from the fact that the school district had already implemented many of the recommendations made by the report of the neuropsychologist in working with the student based upon the school district's thorough assessment of the student's needs. The parents' argument exalts form over substance.

In addition, the law does not require that the school district make changes to the student's IEP in order to reflect the diagnosis made by the neuropsychologist and endorsed by the parents' expert school psychologist, that is that the student had a nonverbal learning disability. Under IDEA, a medical practitioner, or other expert, may not simply prescribe special education or components of an IEP; rather, the IEP team must consider all relevant factors. Marshall Joint School District No. 2 v. CD by Brian and Traci D., 616 F.3d 632, 54 IDELR 307 (7th Cir. 2010); District of Columbia Public Schools 111 L.R.P. 76506 (SEA D.C. 2011). A school district is required to consider any evaluation or other input provided by a parent, and the record evidence in this case reveals that the school district did consider the opinion of the neuropsychologist that the student had a nonverbal disability, but rejected his



conclusion based upon the fact that he did not do any academic testing and that his recommendations were very general, and that it was based upon the disability category rather than upon the individual needs of the student, and that the student did not have the visual-perception problems suggested by the outside evaluator. Accordingly, it is concluded that the school district duly considered the input from the parents, including the report of the neuropsychologist, during the reevaluation process.

The parents' argument that the school district's reevaluation was inappropriate is rejected. The school district's reevaluation complied with the requirements of the law.

The parents make some additional arguments in their post-hearing brief. The argument section of said brief is barely one and one-half pages long, and consists mostly of conclusory statements without any corresponding factual support or legal analysis. The various arguments made in the brief, as fleshed out and supplemented by the proposed findings of fact also submitted by the parents' counsel as well as the questions asked by parent's counsel during the hearing, will be addressed in the following discussion. The first argument made by the parents' brief is that the school district failed to conduct a full evaluation. It appears that the argument here is that the school district failed to fully consider the diagnosis made by the neuropsychologist in his evaluation of the student. This argument has previously been addressed and is

rejected. It also appears that the parents are claiming that the school district failed to assess the student's adaptive behaviors. It is clear from the evidence in the record that the student's adaptive behaviors were assessed during the initial evaluation by the school psychologist, including administering the BASC assessment, which showed the student's adaptive behaviors to be in the average range. The existing data, including the BASC test results, were reviewed by the school psychologist in conducting the reevaluation. Clearly, the school district evaluated the student's adaptive behaviors. The parents' argument with regard to the fullness of the evaluation is rejected.

The parents also argue in their post-hearing brief that the school district's evaluation failed to sufficiently identify the student's needs. It appears that this argument concerns the student's social and emotional needs. The record evidence, however, reveals that the school district had conducted a thorough functional behavioral assessment of the student and that from that it developed a positive behavior support plan to address the student's social and emotional needs. In addition, the student's IEP recognized that the student had certain social-emotional needs and those needs were addressed in the IEP, including support from the emotional support teacher as well as the related service of counseling with the school social worker. It appears that the parents are arguing that the appropriateness of the reevaluation should be determined in isolation. There is no requirement that a school district repeat verbatim every component of a student's IEP or behavior plan in detail

in a report of a reevaluation. The reevaluation must be evaluated in the context of the entire educational program offered to the student. The school district school psychologist provided credible and persuasive testimony that all of the student's teachers and service providers felt that the student was making progress and that the student's current specially designed instruction and IEP as well as [the student's] positive behavior support plan were adequately meeting [the student's] needs academically, behaviorally and socially. This testimony is corroborated by the report of the reevaluation. Clearly the school district had appropriately identified and addressed the student's social-emotional needs. The parents' argument in this regard is rejected.

The parents argue in their brief that the school district failed to sufficiently review the input of the student's regular classroom teacher. The report of the reevaluation, however, specifically includes observations made by the student's classroom teacher as well as observations by the learning support teacher, the emotional support teacher and the school social worker. All of the student's teachers and related services providers felt that the student's current IEP with its specially designed instruction and [the student's] positive behavior support plan were adequately meeting [the student's] needs academically, behaviorally and socially. The argument by the parents in this regard is not supported by the record evidence and it is rejected.

The parents argue in their brief that the school district's evaluation failed to use technically sound testing instruments. The parents' brief provides no explanation concerning how any of the testing instruments used were technically unsound. There is no evidence in the record to support such a conclusion. The parents' argument in this regard is rejected.

The parents argue in their post-hearing brief that the school district's evaluation failed to fully use the information provided by the parents. It is not clear exactly what “fully use” is meant to convey in terms of this argument, but it appears that there are two components asserted. First, the parents seem to be arguing that the school district failed to appropriately address the student's social and emotional needs. This matter has been addressed above and the argument is rejected. The argument also seems to include a component that the school district violated IDEA by failing to completely adopt the diagnosis provided by the neuropsychologist and to conform the student's IEP to the neuropsychologist's recommendations. As has been discussed above, however, the report of the neuropsychologist was duly considered by the school district, and to the extent that it was not consistent with the supports and specially designed instruction already contained in the student's IEP and positive behavior support plan, the school district rejected the conclusions of the neuropsychologist. The school district is not required to adopt the recommendations of an evaluator, but only to duly consider them. In this case, the record evidence

shows that the school district duly considered the report of the neuropsychologist provided to it by the parents. The parents' argument that the school district failed to fully use the information that the parents' provided is rejected.

It is concluded that the school district's reevaluation of the student was appropriate and complied with all legal requirements. The parents are not entitled to an independent educational evaluation at public expense. The parents may still obtain an independent educational evaluation, although the school district is not required to pay for it. 34 C.F.R. §300.502(b)(3). Any evaluation submitted to the school district by the parents must, nonetheless, be duly considered. 34 C.F.R. §300.502(c).

**ORDER**

Based upon the foregoing, it is HEREBY ORDERED that the school district is not required to pay for the independent educational evaluation requested by the parents.

ENTERED: August 20, 2012

James Gerl  
James Gerl, Certified Hearing Official  
Hearing Officer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has served the foregoing DECISION  
by emailing a true and correct copy thereof to the following:

Phillip Drumheiser, Esquire  
[redacted]

and

Sharon O'Donnell, Esquire  
[redacted]

On this 20th day of August, 2012

*James Gerl*  
James Gerl, Certified Hearing Official  
Hearing Officer

SCOTTI & GERL  
216 S. Jefferson Street  
Lewisburg, WV 24901