

State of Maine
Special Education Due Process Hearing Decision
MSAD 17 v. Parent, Case No. 02.345

REPRESENTING THE SCHOOL: Marcy [sic] Gray
Director of Special Services, MSAD 17
REPRESENTING THE PARENT: Louis H. McIntosh
Merrywing Corporation
HEARING OFFICER: Carol B. Lenna

This hearing was held and the decision written pursuant to Title 20-A, MRSA, §7207-B et seq., and 20 USC §1415 et seq., and accompanying regulations.

The due process hearing was held on behalf of Student, a X year XX month old X grade student whose date of birth is xx/xx/xx. He resides with his Parent, a resident of the MSAD 17 school district. Student has been identified as a student eligible for special education services under the category of speech and language. In September the school performed updated psychological, physical therapy, occupational therapy, speech and language, and educational achievement assessments. The parent states that she disagrees with these evaluations and now seeks reimbursement for an independent educational evaluation she has obtained. The school has denied the parent's request. This hearing is requested by the MSAD 17 School Department, as required by special education regulations §9.19 and §12.5, to show that its evaluations are appropriate.

The parties met on Friday, December 20, 2002, for a prehearing conference in preparation for the hearing. The parties exchanged documents and witness lists. During the prehearing discussion the hearing officer raised the issue of the related dispute emerging around Student's continued eligibility as a result of the evaluation findings obtained by the school and parent. The parties acknowledge that this dispute is pending, but since the parent's evaluation reports are not yet completed, they have yet to be considered by the PET. As a result, no final determination regarding the student's continued eligibility has been made. Neither party argued to have the hearing set aside until the eligibility dispute is ripe for review, or until the parent's evaluations are complete. This hearing, therefore, confines itself to the request for reimburse [sic] for the independent educational evaluation only.

The hearing convened on January 6, 2003 to hear testimony in this matter. The parent was not in attendance at the hearing, but forwarded a letter to the hearing officer, dated December 17, 2002, stating that her advocate, Mr. McIntosh, would act on her behalf. The school called three witnesses to give testimony at the hearing; the parent called no witnesses. The school introduced 170 documents into the hearing record; the parent introduced 147 documents. Following is the decision in this matter.

III. Preliminary Statement

The student is a X year XX month old X grade student in MSAD 17. While in Kindergarten he was identified as a student eligible for special education services under the category of speech and language. On March 9, and again on May 29, 2002 the PET met and discussed the student's continued eligibility for special education services. Updated evaluations were ordered. In September 2002 the school performed a psychological evaluation, an educational achievement evaluation, an occupational therapy evaluation, a physical therapy evaluation, and a speech and language evaluation. In October the parent alerted the district that she would seek an independent educational evaluation (IEE). In July, October, and November the parent obtained her own evaluations, for which she now seeks reimbursement. The school has denied the parent's request for the IEE and has filed this hearing, as required by special education regulations §9.19 and §12.5, to show that its evaluations are appropriate.

III. Issue

Has the School Department conducted an evaluation that is appropriate to identify the student's special education and related service needs. If not, are the parents entitled to an independent educational evaluation at public expense.

III. Findings of Fact

1. The student is eligible for special education services as a student with a speech and language disability. He was identified by the PET in late May 1999, when in Kindergarten, and has received services since beginning first grade. (Exhibit S.163-170)
2. In March 2002 the PET met to review the student's program. It was determined that cognitive and achievement assessment would be completed by October 2002 to "determine if [a] learning disability exists in math and reading". (Exhibit S.104-105, P.64)
3. In May 2002 the PET met to review the question of the student's need for Extended School Year services. During that discussion the parent requested that occupational therapy and physical therapy evaluations be added to the upcoming evaluations by the district. Learning problems and gross and fine motor issues were noted as parent concerns for testing. The PET determined that updated assessments would be completed in the areas of physical therapy, occupational therapy, cognitive aptitude, speech and language, and educational achievement. The parent agreed with that determination. The parent did not agree with the PET recommendation to eliminate OT services.

She also stated that the student required additional services than those proposed in his current IEP, but she did not specify what those services should be. (Exhibit S. 94-95, P.61, P.74)

4. On September 13 and 16, 2002 the district's consulting psychologist, Thomas Collins, Ed.D, administered the Differential Abilities Scales (DAS) to assess the student's cognitive ability and to identify specific cognitive strengths and weaknesses and the Naglieri Cognitive Assessment System (CAS) to assess the cognitive factors of planning, attention, successive processing, and simultaneous processing. A records review, including teacher reports, and an interview with the student were also conducted as part of the assessment. Dr. Collins is a licensed psychologist and a certified School Psychological Services Provider. He is qualified to administer and interpret the DAS and the CAS. He has extensive experience in administering both these cognitive assessments, as well as other instruments. He testified that he chose these two instruments for this student's evaluation because he had administered the DAS to the student in the past and wished to have comparative data, and the CAS because it was based on a different cognitive model and he was interested in the degree of agreement between the two instruments. This is the third time he has evaluated the student over the past three and one-half years. (Exhibit S.8-15; Testimony Collins)
5. The Differential Abilities Scales is a test battery designed to test global cognitive ability and to identify specific cognitive strengths and weaknesses. Its normative range is for students age 2.5 through 17 years of age. The test evaluates Verbal Reasoning, Nonverbal Reasoning, and Spatial Reasoning. The sub-tests de-emphasize language and timed completion tasks which are areas of concern for the student. Results obtained by the student on the DAS were as follows: Verbal Reasoning 92, Nonverbal Reasoning 84¹, and Spatial Reasoning of 72. This results in a Global Conceptual Ability² score of 80, putting him in the low average range of cognitive ability. In his report of the DAS summary, Dr. Collins commented on his concern regarding the student's continued difficulty with spatial relationships and slow growth in that area in a normative sense. He recommended a thorough vision examination. (Exhibit S.8-17A; Testimony Collins)
6. The DAS – Naglieri Cognitive Assessment System (CAS) is a test battery that assesses four specific cognitive factors: Planning, the ability to organize oneself and one's strategy regarding cognitive tasks; Attention, the ability to sustain one's level of concentration; Successive Processing, problem solving

¹ Dr. Collins' original report recorded the student's Nonverbal Reasoning score as 79. During his testimony he stated that as he prepared for his testimony for the hearing he realized he had miscalculated the student's test result for NR. The accurate NR score was actually 84. He testified that the corrected score did not change the student's overall cognitive score of 80, nor Dr. Collins' interpretation and conclusions regarding the student's cognitive abilities.

² Dr. Collins' report refers to the student's "Global Cognitive Ability". During testimony he clarified that the correct term used by the test publishers is "Global Conceptual Ability".

- when stimuli do not remain present; and Simultaneous Processing, problem solving when stimuli remain present, involving multiple steps and the possibility of being overwhelmed by the amount of data present. This instrument was chosen by Dr. Collins because its normative range is appropriate for the student's chronological age, it de-emphasizes language skills development and the processing emphasis permits the evaluator to derive instructional strategies. All twelve sub-tests were administered. Results obtained by the student on the CAS were as follows: Planning 73³, Simultaneous Processing 83, Attention 82, Successive Processing 81 for a Full Scale score of 73, a score in the "well below average" cognitive range. Dr. Collins concluded that these scores supported the findings from the DAS. (Exhibit S.8-19; Testimony Collins)
7. On September 18, 2002, in an addendum to his psychological report, Dr. Collins presented a summary of the Behavior Assessment System for Children (BASC). Four individuals completed the questionnaires that were scored by Dr. Collins: the student's mother, his father, the student's physical education teacher and his X grade classroom teacher. Results of responses are scored to fall into three categories, "Average", "At Risk" and "Clinical Risk". "At Risk" is defined as a skill or behavior that is delayed. Of the 56 possible responses scored, the majority of the student's scores fell in the "Average" range, with 16 scores in the "At Risk" range and 1 score in the "Clinical Risk" range. The student's physical education teacher identified "Withdrawal" as a clinically significant concern. Dr. Collins did not interpret this data, nor did he draw any conclusions regarding the results. (Exhibit S.20-21, S.85, S.81; Testimony Collins)
 8. On September 25, 2002 the district's speech/language pathologist, Cheryl Wagner, conducted a speech and language evaluation. She administered the Peabody Picture Vocabulary Test – Form IIIB, The Expressive One Word Picture Vocabulary Test, The Word Test Elementary – Revised, and the Test of Auditory Perceptual Skills – Revised. The report was distributed on September 27, 2002. Ms. Wagner is a Master's level, licensed and certified speech and language pathologist. She is qualified to administer each of the test instruments chosen for her evaluation. (Exhibit S.22-27; Testimony Wagner)
 9. The Peabody Picture Vocabulary Test is a test instrument to assess receptive vocabulary for Standard American English. The student obtained a standard score of 107. Ms. Wagner concluded that his performance "falls solidly in the average range indicating he should be able to comprehend grade level vocabulary." (Exhibit S.22; Testimony Wagner)

³ Dr. Collins stated that he realized he had incorrectly reported the student's CAS Planning score as 77. The student's actual achieved score on this sub-test was a 73, not the 77 reported. Again, he testified that after correcting the mistake his interpretation and conclusions did not change.

10. The Expressive One Word Picture Vocabulary Test is an instrument designed to determine current levels of expressive vocabulary for Standard American English. He obtained a standard score of 105, leading Ms. Wagner to conclude that his performance was “solidly in the average range indicating that he possesses expressive vocabulary appropriate for his current placement” and that his “expressive and receptive vocabulary skills are equally developed at this time.” (Exhibit S.22; Testimony Wagner)
11. The Word Test Elementary is a test designed to determine current levels in language skills. The instrument looks at the student’s ability to recognize and express the critical attributes of his language and looks at categorization skills, defining, verbal reasoning as well as word choice. The student obtained standard scores ranging from 85 to 110 on the six sub-tests that make up the test battery. Individual sub-test performance led Ms. Wagner to conclude that the student demonstrated high average skills in categorization and verbal reasoning; an average ability to focus on key attributes of words, adequate word retrieval and a solidly developed vocabulary; a solidly average ability to comprehend and recreate sentences when given absurd statements and to understand the underlying meaning of words; an average understanding of how to create opposites with adequate retrieval skills; a low average ability to observe, analyze and express features of words; and an average understanding that words can have more than a single meaning. His sub-test scores fell within the average range for both the sub-tests and the full battery, with relative weaknesses shown in “Definitions” and “Antonyms”, and relative strengths shown in “Associations”. His overall standard score was computed at 96. (Exhibit S.23; Testimony Wagner)
12. The Test of Auditory Perceptual Skills – Revised was administered to assess performance in various areas of auditory perceptual skills. The “skills assessed include [the] ability to sequence auditory matter, [the] ability to retain auditory material to recall the matter, [the] ability to reason, [the] ability to articulate words correctly and the ability to remanipulate, reorganize and reconstruct auditory matter. Performance is considered to be in the average range if it falls between 85-110.” The student’s performance on the seven sub-tests ranged from a low of 83 on Auditory Numbers Forward, Auditory Word Memory, and Auditory Interpretation of Directions to a high of 109 in Auditory Processing (Thinking and Reasoning). The overall standard score obtained in this assessment was 89. (Exhibit S.24; Testimony Wagner)
13. In her final report Ms. Wagner concludes that the results of the student’s speech and language evaluation “shows [sic] average performance in all assessed skill areas” with “evenly developed expressive and receptive skills”. She concluded that his relative weaknesses in the ability to recall rote nonsensical, sequential material, and the ability to understand directions of increasing complexity may indicate some difficulty in understanding and

- comprehension, but noted in her report that his “[o]verall test results suggest a student with average to low average language skills that is performing in line with his cognitive potential.” (Exhibit S.24-25; Testimony Wagner)
14. On September 27, 2002 the district’s consulting Occupational Therapist conducted an evaluation with the student. The evaluator, Sandra Garcia, is a registered and licensed occupational therapist with 14 years experience. She administered the Bruininks-Oseretsky Test of Motor Proficiency, the VMI Developmental Test of Visual Perception, and the Beery Buktenica Test of Visual Motor Integration. She is qualified to administer and interpret each of these assessments. Scores obtained by the student on the Bruininks-Oseretsky Test of Motor Proficiency showed a 1 year, 9 month delay on the Visual Motor Control sub-test, and an 8-month delay on the Upper Limb Speed and Dexterity sub-test. Scores obtained on the VMI showed an 8-month delay in the test of visual perception. Scores obtained on the Beery showed the student exhibits a 4 year, 1 month delay in visual motor integration. When compared with the same set of instruments administered in May 2001, the student exhibited a 6 month loss of skills in motor proficiency, a 15 month improvement in upper limb speed and dexterity, a 3 year, 3 month improvement in visual perception, and a 6 month loss of skills in visual motor integration. Ms. Garcia noted that the student has the most difficulty with tasks that require him “to put his pencil to work interpreting what his eyes see.” When comparing the student’s performance on the Bruininks and the VMI, she concluded that the student does better when structure and guidelines define the tasks. She concluded the student would benefit from occupational therapy services. (Exhibit S.28; Testimony Garcia)
15. On October 3, 2002 a district special education teacher, Mary Shorey, conducted achievement testing with the student. The Key Math, The Kaufman Test of Educational Achievement (KTEA), the Peabody Individual Achievement Test-Revised (PIAT), the Oral and Written Language Scales (OWLS), and the Test of Written Language (TOWL) were administered. For each of the instruments a standard score of 100 equals exact average. On the Key Math the student obtained a standard score of 86 in Basic Concepts, a 78 in Operations and an 88 in Applications. On the KTEA the student obtained a standard score of 76 on Math Applications, 84 on Reading Decoding, 73 on Spelling, 82 on Reading Comprehension, 67 on Mathematics Computation, 83 on Reading Composite, 68 on Mathematics Composite, and 74 on Battery Composite. On the PIAT the student obtained standard scores of 86 on Mathematics, 77 on Spelling, and 76 on Written Language. On the TOWL the student obtained standard scores of 77 on Contrived Writing Quotient, 85 on Spontaneous Writing Quotient and 79 on Overall Writing Quotient. On the OWLS the student achieved a standard score of 80. The evaluator noted that these scores were commensurate with the student’s scores of cognitive functioning reported in Dr. Collins’ evaluation report. (Exhibit S.30-31)

16. On September 5, 2002 the district's consulting Physical Therapist, Sharon Phinney, conducted a physical therapy evaluation of the student. She determined that the student "appears to be on target for gross motor skills required for academic instruction. He is somewhat 'clumsy' with high level ball skills, but this does not apply to a requirement for physical therapy..." She did not recommend physical therapy services. (Exhibit S.32-34)
17. On October 9, 2002 the PET convened to review the district's evaluations and discuss the student's need for continued special education services. During the meeting the parent stated that they [sic] were [sic] seeking an independent educational evaluation because she felt the district's evaluations were incorrect. She informed the PET that on July 5, 2002 she had obtained an evaluation where the Woodcock Johnson-Revised (WJ-R) was administered, and that a neuropsychological evaluation was scheduled. The team did not reach consensus regarding the student's need to continue receiving special education services. The parent was instructed to put her request in writing for an IEE at public expense. (Exhibit S. 74)
18. On November 25 the PET reconvened to continue the discussion of current evaluative data and their implication for the student's continued need for special services. During the meeting the parent distributed portions of her independently obtained evaluation: preliminary results from the WJ-R, the independent occupational therapy evaluation, and a letter from the neuro-psychologist stating her diagnostic conclusions. The district informed the parent that they were rejecting her request for an IEE and would seek to prove their evaluations appropriate at a due process hearing. The team agreed to suspend discussions of the student's continued eligibility for services until the parent's evaluations were complete and could be considered by the team. Services identified in the current IEP would be continued until the issue was resolved. (Exhibit S.75-77)
19. On July 5, 2002 Ellen Brunelle, an outside evaluator chosen by the parent, evaluated the student. She administered a Woodcock Johnson – Revised Psychoeducational Battery and conducted an interview with the student's mother. A report of this evaluation was prepared on December 19, 2002. The report gives no indication of an interview with the student and does not describe the testing situation or testing behaviors observed. The Achievement portion of the WJ-R was administered, but no analysis or interpretation of the scores is given. In the report's cover letter, addressed to the parent's advocate, the evaluator states that she has recommended that the student receive a neuropsychological evaluation, an occupational therapy evaluation, a speech and language evaluation and a developmental optometry evaluation, but does not point out what findings led her to this conclusion. She goes on to state that she "had been reluctant to provide an interpretation of [the student's] performance until some preliminary results of

that additional testing was [sic] available. Having reviewed [that information] I am confident that the report I am providing to you accurately reflects [the student's] current psychoeducational status." (Exhibit P.1-11)

20. On October 18, 2002 the student had a developmental eye exam by Mary Ellen Connell, a Doctor of Optometry. The Optometrist concluded that the student was nearsighted with astigmatism in both eyes and "a very significant muscle imbalance which we call a convergence insufficiency". Corrective lenses gave him 20/20 vision in each eye. It was recommended that the student wear glasses full time for schoolwork and that close work be broken into smaller increments so that he is not expected to stay on task for long periods of time with reading or deskwork. (Exhibit P. 45)

21. On November 15 and November 12, 2002 the student participated in an independent speech and language evaluation conducted by Amber Lambke, a licensed and certified speech and language pathologist. The evaluator notes that the student "did not come with his glasses to the exam today."⁴ The evaluation consisted of a records review that included some previous testing by the district, teacher reports to the PET, the IEP dated May 2001 and October 2002, an interview with the student and the mother, informal observed tasks, and the administration of the following instruments: The Language Processing Assessment-Revised, The Test of Pragmatic Language (TOPL), The Elementary Test of Problem Solving-Revised (TOPS), The Clinical Evaluation of Language Fundamentals-3 (CELF-3), and the Social Skills Rating Scale (SSRS) completed by the student and his mother. The evaluator reported that the student's test results revealed scattered skills in speech and language areas with overall receptive and expressive language scores below average. "Formal testing of pragmatic language revealed an age appropriate score, however informal report would suggest that [the student] has significant difficulty with perspective taking, sustaining conversation, maintaining appropriate affect and interpreting the details of the situation... Word finding ability appears to be within normal limits. Performance on the CELF-3 raises questions as to whether the student may have difficulty processing auditory information for following directions, remembering short-term information, and analyzing the meaning of words and sentences." She concludes that the student's "profile of strengths and weaknesses raises questions as to whether he may fit under the diagnostic category of Pervasive Developmental Disorders, specifically Asperger Syndrome" but does not elucidate. She did not testify at the hearing. (Exhibit P.14-25)

⁴ Since the testing occurred over two days it is unclear if he did come with his glasses on one, or both of the days. It is also noteworthy that the evaluator referred to a vision report from an ophthalmologist, dated 9/27/02, that stated that the student's vision was *not* correctable to 20/20; a contradiction of the findings of Ellen Connell who stated that the student's vision *was* correctable to 20/20 with glasses. The ophthalmologist's report was not submitted into evidence.

22. On October 31 and November 7, 2002 the student participated in an independent occupational therapy evaluation conducted by Kimberlee Wing, a registered and licensed occupational therapist. The evaluation consisted of Sensory Integration and Praxis Test (SIPT), Clinical Observations and a Sensory Profile, which appears to have had the mother as reporter. Background information and the student's sensorimotor history appeared to have been provided by the student's mother. The evaluator concluded that the student would benefit from occupational therapy services. (Exhibit P.26-37)
23. On November 19, 2002, in a letter addressed to the parent's advocate, the psychologist who administered the neuropsychological evaluation, Julia Domino, Ph.D., notes that she evaluated the student on October 3 and 17, and November 2 and 10. Dr. Domino did not summarize any of her evaluation data or findings, but wrote that she had determined that the student met diagnostic criteria for Asperger's Disorder, and that recommendations will be made to the PET with respect to a determination of Autism. The evaluation report was not submitted into evidence at the hearing. (Exhibit P.13)

IV. Conclusions

Has the School Department conducted an evaluation that is appropriate to identify the student's special education and related service needs? If not, are the parents entitled to an independent educational evaluation at public expense.

Special education law and regulations provide parents with the right to obtain an independent educational evaluation (IEE), and under certain circumstances, the right to obtain an IEE at public expense. Parents may request an IEE at public expense prospectively if they disagree with the results of an evaluation conducted by the school. Or, parents may obtain an IEE first, and after the fact attempt to convince the school that their IEE merits reimbursement since it provides new insights about the student for the PET's consideration. In either case, if the school refuses to grant the parent's request for an IEE, or refuses to pay for the independent evaluation already obtained by the parent, the school must initiate a due process hearing to demonstrate that its evaluation is appropriate, or demonstrate that the evaluation obtained by the parent did not meet agency criteria. If the final decision of the hearing is that the school's evaluation is appropriate, the parents have the right to an independent evaluation, but not at public expense. Whether or not the IEE is obtained at public expense, the PET must consider the results of the evaluation. Maine Special Education Regulations, §§ 9.19 and 12.5(C)

In September 2002 MSAD 17 conducted new evaluations in speech and language, psychological functioning, occupational therapy, physical therapy and educational achievement as ordered by the PET. In October, and again in November 2002, when these evaluation results were presented to the PET, the parent made clear her intent to seek an independent evaluation. The parent's major concern focused on the question of the student's eligibility as a student with a learning disability, and his continued need for occupational therapy services as a supportive service. Upon receiving the parent's written request for an IEE, the school denied the request and proceeded in a timely manner to request a due process hearing to defend their evaluations as appropriate. The parent elected to obtain her own independent evaluations without waiting for the hearing process to be complete. By the date of the hearing all but one of the evaluations was complete⁵.

The school argues that its evaluations meet the criteria set forth in regulations and are therefore appropriate, relieving them of the obligation to provide an independent educational evaluation at public expense.

The Pupil Evaluation Team shall ensure that the student is assessed in all areas related to the suspected disability... Valid and reliable instruments and techniques that yield a description of the student, as a learner shall be used. [Id., § 9.2]

In conducting an evaluation, the school administrative unit shall...use a variety of assessment tools and strategies to gather relevant functional and developmental information...and [u]se technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors... Any standardized tests that are given to the student shall have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel who meet state licensure or certification standards, and are administered in accordance with any instructions provided by the producer of such tests... [Id., §9.5]

To aid in obtaining appropriate and helpful evaluation reports, the Pupil Evaluation Team shall indicate when making a referral for evaluation the disability of concern; how the disability is demonstrated within the school or classroom setting, the information the PET desires from the evaluator in order to plan an appropriate program for the student... The Pupil Evaluation Team shall require each person or agency completing an evaluation or diagnostic service recommended by the PET to submit a written evaluation report no later than 45 school days of

⁵ The report of the parent's independent neuropsychological evaluation report was not ready at the time of the hearing, but a letter from the evaluator indicated that the testing was complete.

the decision to evaluate... Each report shall summarize the evaluation procedures employed; specify the results of each evaluation; summarize the evaluation results and diagnostic impressions; and specify the educational recommendations necessary to accommodate the student's special education needs. [Id, 9.13]

The PET meetings of March and May 2002 discussed the opinions of teachers and parent regarding the student and his struggles in school. At the conclusion of the second meeting it was agreed that the question looming for the PET was whether the student met criteria as a student with a learning disability in math and reading, and how occupational therapy and physical therapy might fit into that question. Evaluations to address that concern were agreed to. It is clear that the district and the parent held different views on the answer to the question, but that these were the "areas related to the suspected disability". The school appropriately organized the assessment effort around that inquiry.

The professionals conducting the various assessments for the district selected a variety of assessment tools and strategies to gather information to assist the PET in determining whether the student met criteria as a student with a learning disability. Technically sound instruments that were validated for the specific purpose for which they were used provided the basis for assessment. Each of the district's evaluators meet state licensure and certification standards, and are qualified to administer and interpret the tests given to the student. Complete and comprehensive reports were provided to the PET that summarized the evaluation procedures employed, the results of each evaluation and the results and diagnostic impressions. Educational recommendations based on evaluation findings were offered. The district's evaluations meet the standards set out in regulation.

The parent bases her claim for an IEE at public expense on her disagreement with the conclusions of Dr. Collins' evaluation, specifically his conclusion that the student's cognitive ability level is in the low average range, with an overall standard score of 80. She argued, through her advocate, that the student is a student with a learning disability and that test data currently before the PET supports that contention. There was no claim that the results of the occupational therapy evaluation or physical therapy evaluation were invalid or inappropriate. The parent did not disagree with the findings of the achievement testing⁶. Likewise, there was no claim that the results of the speech and language evaluation were invalid or inappropriate, except as it referred to Dr. Collins finding of cognitive ability.

⁶ Though the special education teacher who conducted the achievement tests for the district violates evaluation regulation by drawing her own conclusions regarding the student's eligibility as a student with a learning disability, this inappropriate conclusion on her part does not invalidate the scores the student achieved on the various assessments, nor did the parent argue that point. The regulations are clear that questions of eligibility are matters reserved to the PET and are not to be made by individual evaluators. "Evaluation reports shall not make either eligibility or placement determinations since these deliberations are the responsibility of the Pupil Evaluation Team." MSER §9.13(D)

At hearing the parent presented no witnesses to argue that any of the district's evaluations lacked credibility or reliability. While the parent clearly takes exception with Dr. Collins' determination that the student has a low average cognitive ability, no expert witness was called to contradict Dr. Collins' interpretations and conclusions. During his questioning of Dr. Collins, and again in the closing statement, the parent's advocate, Mr. McIntosh, went on at length to argue that Dr. Collins had failed to correctly factor in the student's performance in the Spatial Reasoning cluster of the Differential Abilities Scales when he made his determination that the student's overall cognitive score fell in the low average range. Mr. McIntosh read from the DAS test manual, debating with Dr. Collins about the DAS test publishers' interpretative instructions, in an attempt to question the credibility of Dr. Collins' findings. Dr. Collins disagreed with Mr. McIntosh's representation of what the test publisher's [sic] intended in their instructions to test givers regarding cluster score variance.

Dr. Collins made it clear that he stood by his reported conclusions of the assessment findings. He maintained that his report was an accurate reflection of the student's cognitive functioning at the time. He went on to state that the student's scores "were what they were", but that his findings and conclusions were not based on a one-time administration of one test. He reiterated that he had evaluated the student over a three and a half year span using different instruments, thus giving him data for this student over time, using different cognitive models. He agreed that the student's visual acuity might have an impact on the student's performance on tests of spatial reasoning, and suggested re-administering those subtests if glasses are determined to be significant to his visual performance, and re-evaluating the data at that time. He did not agree with Mr. McIntosh's view that the student's Spatial Reasoning test score invalidated the reported findings.

It was established that Dr. Collins is qualified to administer and interpret the DAS, and has done so with hundreds of children. Since Mr. McIntosh was not a witness at this hearing, did not present any witness to shore up his interpretation of what the test publisher intended in its instructions to the test giver, and did not establish that he himself had any expertise in the administration or interpretation of the DAS, there is no way for the hearing officer to be persuaded by his argument regarding the Spatial Reasoning score and its implications for the student's overall cognitive functioning.

The parent argues that the results from a psychoeducational evaluation performed by Ellen Brunelle are further evidence that Dr. Collins' data lacks credence. Ms. Brunelle conducted a Woodcock Johnson-Revised with the student on July 20, 2002. In her report she states that, based on the student's performance, his assessed cognitive ability is in the average range with an overall standard score of 93. This argument fails to be persuasive as well.

Ms. Brunelle did not testify at the hearing, but from the written documentation in the record it appears that her report was not written until five months after the test battery was administered. In the cover letter of her evaluation, dated December 19, 2002, she states that it is “uncommon to have the results of a July testing session reported in December” but that she was “reluctant to provide an interpretation of [the student’s] performance until some preliminary results of [the neuropsychological, occupational, speech and language and developmental optometry] testing was [sic] available.” She does not analyze nor summarize the achievement portion of the battery, and in view of the fact that that she did not provide testimony to lend clarity to her findings, there is no way to conclude that Ms. Brunelle’s test data is more reliable, or should be given credence to dispute Dr. Collins’ findings. Given that her report so clearly violates the “agency criteria” that requires evaluation reports be completed no later than 45 school days of the evaluation, the school is under no obligation to reimburse the parent for it.

Since the parent introduced no evidence to communicate a disagreement with the district’s speech and language and occupational therapy evaluations, it is difficult to know why the IEE included such extensive assessments in each of these two areas. A review of these evaluation reports shows that the evaluators administered different instruments than the district, and in some instances achieved different results. However, the parent presented no evidence upon which to conclude that these tests presented a more accurate picture of the student, or that they were administered to identify a suspected area of disability not yet assessed. The parent introduced no evidence that the school had failed to evaluate the student in all areas related to a suspected disability⁷. A review of teacher reports and minutes of PET discussions in the record shows no evidence that the district had concerns that they failed to address in evaluations of the student. In the case of the occupational therapy evaluation, the findings of both the district and the parent’s OT evaluations recommend the student receive OT services.

The school has conducted a set of evaluations that comply with the standards set forth in regulations and presented those reports to the PET for consideration. In the absence of any evidence to the contrary, the school’s evaluations are found to be appropriate. The parents are not entitled to reimbursement. *Holmes v Millcreek Township Sch. Dist.*, 32 IDELR 1 (3rd Cir. 2000) (Parents may be reimbursed for IEE only by showing that district’s evaluation is inappropriate.)

⁷ While the parent’s speech and language evaluation and the letter from the neuro-psychologist raise the possibility of Asperger’s Syndrome and Asperger’s Disorder, respectively, there is no evidence that behaviors associated with this diagnosis have been identified by either the parent or the district as a “suspected disability”. Neither of these evaluators testified at the hearing, so it is impossible to evaluate the weight of their findings and opinions. In the case of the neuro-psychologist, the evaluation report itself was not available.

V. Order

No order is given with this decision.

Carol B. Lenna
Hearing Officer