

appeared on behalf of the District. On April 15, 2019, Parent filed her post-hearing brief. On April 19, 2019, the District filed its proposed findings of fact and conclusions of law.

Findings of Fact

1. ■ was born on ■. He lives with his ■. His birth mother exposed him to drugs, alcohol, and cigarettes in utero.
2. ■ is currently attending kindergarten at ■ elementary school within the District.

2016 Evaluation

3. In September/October 2016, the District evaluated ■ as a Young Child with a Developmental Delay (YCDD),¹ which included, in part:

- a. ■'s gross motor skills fell within the 4th percentile for children his age, per the DIAL-4.²
- b. ■'s communication skills fell within the 27th percentile per the DIAL-4, and his receptive and expressive language skills fell within normal range per the Test of Early Language Development-Third Edition (TELD-3). ■'s expressive language score was 20 points higher than his receptive language score, which was unusual. The District stated that ■ "has many words" but he "does not use them effectively and efficiently." Ex. 3 at 20.
- c. ■'s sensory processing skills were assessed, and part of the assessment involved a parent questionnaire. ■ scored 2 standard deviations below other children his age, and it was recommended that: a) teachers speak slowly and quietly; b) ■ be provided a "quiet corner," "items to fiddle with," and be allowed to have snacks at his desk to benefit self-regulation; c) ■ be provided "movement breaks" and "work in different positions," and incorporate "heavy work" that provides sensory input to the muscles and joints, which can be calming and organizing for the body; and d) ■ be provided directions in a variety of ways and reduce distractions. Ex. 3 at 22.

¹ The IDEA provides that young children with a developmental delay are entitled to special education and related services. The IDEA allows each states to define the age range for YCDD as three to nine, or "any subset of that age range, including ages three through five." 34 C.F.R. § 300.8(b). In Missouri, the age range for YCDD is three through five. The Missouri State Plan for Special Education 2017 (State Plan), Regulation I, p. 5 and Regulation III, p. 32.

² We were unable to locate in the record the full name of this test.

- d. [REDACTED] behavior was deemed clinically concerning while at home per the Behavior Assessment System for Children (BASC-3) by the school psychological examiner, [REDACTED].³ The concerning behavior included “Hyperactivity, Atypicality, Attention Problems, Adaptability, and Activities of Daily Living. At-Risk range behaviors include Aggression, Depression, Somatization, Withdrawal, Social Skills, and Functional Communication.” Ex. 3 at 25.
- e. [REDACTED] fine motor skills were below average on the grasping subtest and on visual motor integration per the Peabody Developmental Motor Scales (PDMS).
- f. [REDACTED] oral language was 1.5 standard deviations from the norm per the Comprehensive Assessment of Spoken Language (CASL-3-6 years), which tested a child’s language comprehension, expression, and retrieval for the specific language categories of semantics, syntax, supralinguistic, and pragmatics. It was stated that [REDACTED] “does not communicate in a manner typical for a child his age.” Ex. 3 at 20.
- g. [REDACTED] cognitive skills were 1.33 standard deviations below the mean per the Battelle Developmental Inventory, 2nd Edition (BDI-2 Cognitive) and his adaptive skills were 2 standard deviations below the mean per the BDI-2 Adaptive.
- h. [REDACTED] social/emotional skills were in the 1st percentile as reported by his parents and summarized as [REDACTED] “argues when denied his own way, acts without thinking, interrupts, clings or hangs on to you, gives up easily, falls and hurts self, is restless and can’t sit still, and wanders away in public places.” Ex. 3 at 21. In the classroom, it was noted that [REDACTED] “had difficulty following teacher directions, showing interest in working/playing with the group, responding to teacher questions, and being approachable . . . refused to participate in work time activities or answer questions . . . he did not tell the teacher ‘no.’” *Id.*

4. In November 2016, the District concluded that [REDACTED] was a child with an educational disability having met the YCDD criteria in the areas of cognitive, adaptive, social/emotional, communication and physical, and he was in need of special education and related services.

5. On November 16, 2016, the District implemented an individualized education program (2016 IEP) for [REDACTED], which stated, in part, that [REDACTED]

³ [REDACTED] is a school psychologist examiner with 23 years of experience in special education. She graduated college with a double major in elementary education and learning disabilities. She received her master’s degree in special education, and she holds a certificate as a school psychological examiner. She has performed approximately 1,500 assessments. She has also taught special education for several years.

- a. Has epilepsy and experiences seizures that last shorter than 1 minute and generally occur when he is agitated, followed by crying, falling to the ground, stiffening up, and convulsing.
 - b. “[D]emonstrates significant delays in his communication skills. He struggles with identifying basic concepts and vocabulary. He has difficulty following directions. This may impact his ability to develop meaningful relationships, as well as inhibit his ability to demonstrate his academic knowledge. [REDACTED] demonstrates difficulty with age appropriate fine motor skills including grasp of writing utensils, grasping and using scissors, and copying pre-writing shapes. [REDACTED] demonstrates difficulty with sensory processing and self-regulations skills.” Ex. 4 at 32.
 - c. Can be destructive to himself, others, and property, and he “lashes out at people and animals” when “things don’t go his way.” *Id.* Has trouble maintaining eye contact because he becomes distracted and has a hard time interacting with other children.
6. The 2016 IEP provided the following special education services to [REDACTED]:
- 75 minutes 4x weekly Adaptive Behavior Skills;
 - 150 minutes 4x weekly Cognitive Skills;
 - 150 minutes 4x weekly Communication Skills;
 - 75 minutes 4x weekly Fine Motor;
 - 150 minutes 4x weekly Social Skills
7. The 2016 IEP provided the following related services for [REDACTED]:
- 60 minutes 4x weekly Language–Semantics; and
 - 60 minutes a week Occupational Therapy.
8. The 2016 IEP set forth ten annual goals, including having [REDACTED] match colors and shapes, work on counting and labeling objects and spatial concepts, correctly grasp scissors and cut across a piece of paper independently, copy pre-writing shapes, participate in small groups, tolerate changes in daily routine without crying, increase attention span, and follow classroom routines.
9. By November 6, 2017, [REDACTED] had met four of his ten goals and was making progress on the rest.

Summer 2018

10. On May 14, 2018, the District amended [REDACTED] IEP (May 2018 IEP) because [REDACTED] was transitioning from early childhood to kindergarten. The IEP provided:

Special Education Services:

- 180 minutes 4x weekly Cognitive Skills – ending 8/14/18
- 190 minutes 4x weekly Communication Skills - ending 8/14/18
- 150 minutes 4x weekly Social Skills - ending 8/14/18
- 75 minutes 4x weekly Fine Motor - ending 8/14/18
- 150 minutes a week Math Calculation - ending 8/14/18
- 150 minutes a week Reading – ending 11/5/18
- 150 minutes a week Written Expression – ending 11/5/18
- 100 minutes a week Behavior Skills – ending 11/5/18

Related Services:

- 60 minutes 2x weekly Language –Semantics from 11/7/18 to 8/14/18, and 30 minutes 2x weekly from 8/15/18 to 11/5/18
- 30 minutes 2x weekly Language – Pragmatics – ending 11/5/18
- 60 minutes 2x weekly Occupational Therapy – ending 11/5/18

11. The May 2018 IEP also provided ten higher level annual goals for [REDACTED], including:

- a. [REDACTED] fine motor skills goals were: a) “cutting around basic classroom shapes with bold lines, such as a circle and square on $\frac{3}{4}$ trials;” and b) “independently draw prewriting shapes including circle, cross, and square without verbal or physical prompts as well as write the letters of his first name within $\frac{1}{8}$ ” of the baseline on $\frac{3}{4}$ trials. Ex. 7 at 56.
- b. [REDACTED] communication goals were to: a) by 11/5/2018, [REDACTED] will answer “wh”⁴ questions, name 3 items in a category and give 3 attributes of an object with 80% accuracy over 3 data days (semantics skills); and b) by 11/5/18, [REDACTED] will identify at least 5 unthinkables⁵ and their behaviors, determine the size of the problem, and determine what emotions area associated with each zone of regulation with 80% accuracy over 3 data days (pragmatics skills).

⁴ There is no definition of “wh” in the record. We take this to mean through the context of the record that this means answering a “why” question or a question that asks a child to further elaborate on such things as who, what, when, and where.

⁵ This word was not defined.

12. The May 2018 IEP noted:

- a. “ [REDACTED] has made wonderful progress this year in OT . . . [h]e is now able to easily cut across the paper, and occasionally needs a verbal cue for “thumb up” in the scissors. He is working on cutting out a variety of shapes. He is now able to copy basic pre-writing shapes and is working on making them from memory . . . as well as writing the letters of his name from a model.” Ex. 7 at 53.
- b. [REDACTED], while in an early childhood setting, was: i) able to quickly learn the classroom routine but did not do well with changes in routine; ii) able to make friends, shared toys, be kind and respectful; count to 12 and name 10 colors and 5 shapes; and improve his number and letter identification skills; iii) able to give and receive affection with family and friends; iv) anxious and demonstrated excessive talking and movement at times; v) required to have one or more sensory breaks during the three hour day; vi) able to make eye contact but had difficulty maintaining it when distracted; vii) known to occasionally refuse an activity (for sensory reasons or if he doesn’t think he can do it, and often finished a task with encouragement and praise from the teacher; and viii) known to have difficulty communicating past events.

13. [REDACTED] attended a child care center full time from age 18 months until approximately June 2018. The Director of the facility, [REDACTED], owned the facility for five years.⁶ [REDACTED] observed that [REDACTED] struggled with communicating his feelings appropriately, telling the truth, reciprocating stories, and he bantered “off-the-wall things that have no relevance or anything to do with what we might actually be talking about.” Tr. at 142. [REDACTED] believed some of [REDACTED] behaviors were typical for his age, but he “definitely exceeded the typical behavior.” *Id.*

14. [REDACTED] also observed that [REDACTED] had trouble sitting still, focusing, participating in circle time, and engaging in structured activities, and he did not learn from consequence imposed on him. [REDACTED] stole toys from the facility.

15. [REDACTED] has not observed [REDACTED] in kindergarten or spoken with [REDACTED] current teachers.

⁶ Prior to owning her own facility, [REDACTED] worked for the State of Missouri on its abuse and neglect hotline for eight years. She has a bachelor’s degree in child and family development and she is working on her master’s in school counseling.

16. In August 2018, [REDACTED] began kindergarten with the following main educators:
- [REDACTED] is [REDACTED] general education teacher. She is certified in early childhood and elementary education, and is currently getting her master's degree in literacy instruction. She has taught fifth grade for two years and kindergarten for three years. She first became acquainted with [REDACTED] in June 2018, when she taught [REDACTED] in summer school before kindergarten. Summer school was Monday through Friday, and [REDACTED] did "great." Tr. at 227. [REDACTED] followed directions, participated, got along with other students, and performed well.
 - [REDACTED] is [REDACTED] special education teacher. She has taught special education for approximately 15 years. She has a bachelor's and master's degree in special education. She is a certified special education teacher.
 - [REDACTED] is [REDACTED] speech language pathologist and has worked in the field for 20 years. She has a master's degree in communication disorders and sciences and has performed 200-300 language assessments. [REDACTED] provides [REDACTED] with SPL services in a separate and quiet room with one other student two times per week. She primarily targets semantics⁷ with [REDACTED].
 - [REDACTED] provides [REDACTED] occupational therapy (OT) services.⁸

RED Meeting

17. In September 2018, the District began a Review of Existing Data (RED) regarding

[REDACTED]. As part of the RED:

Parent completed a social history questionnaire, which indicated, in part, that [REDACTED]: a) takes responsibility and shows independence and self-confidence; b) daydreams, has an inability to focus, and is distracted; c) is overactive, has temper tantrums, and is difficult to manage; d) uses behavior to manipulate parents; e) rocks, spins, engages in head banging, and has unusual hand/finger movements; f) dislikes loud places; g) frequently falls or has accidents; h) wets bed, has trouble sleeping, and does not react well to changes in routine; i) lashes out at people and animals when upset; j) has trouble interacting with other children because he does not understand them but he interacts better with adults; k) says things off subject and over and over again; and l) does not want to go to school.

⁷ Semantics is generally the selection of words to represent intended meaning and the combination of words. Tr. at 431.

⁸ [REDACTED] education and experience is not in the record.

18. On September 6, 2018, █████ spoke with █████ father and discussed that █████ was doing well in school, had good behavior, followed school rules and routines, and was making good progress on his goals. █████ father informed █████ that █████ was “making leaps and bounds at home too.” Ex. 1 at 16.

19. On September 11, 2018, the District held an RED meeting with Parent, in which the following was documented, in part:

- a. █████ is well-mannered, sweet, tries his best, asks for help, has friends, responds to positive praise, recalls practiced facts, follows classroom rules, takes care and organizes personal belongings, acts silly, reads below grade level, and per the school librarian he has trouble staying still, controlling his body at times, maintaining personal space, taking turns talking. █████ is also calm and cooperative in the morning but his activity level increases in the afternoon. He also follows directions quickly but may be moving about in his seat, follows whole group directions but may lag behind slightly in art class. In special education he sometimes has difficulty comprehending what is being asked and needs directions given to him in different ways at times, occasionally stomps his foot or slaps his hand on the carpet, which appears to be a sensory seeking behavior, and receives two sensory breaks a day.
- b. Parent reported, in part, that █████ had trouble explaining past events and holding on to newly learned information, talking outside the here and now but is getting better, accurately retelling a story or past events, he falls out of his chair at least five times per meal, transitions are difficult and can turn into meltdowns lasting hours, he can become physically violent when he is upset, gives up easily if something is hard, school work is a big issue at home, he can be destructive to himself and property, he will throw or break a favorite toy, marks the walls, damages the floor, and he cannot be left with a babysitter.
- c. █████ has the following medical diagnoses: a) behavior dysregulation disorder (BDD); b) attention deficit hyperactivity disorder (ADHD); c) fetal drug and alcohol exposure; d) asthma; e) allergies, f) epilepsy, and g) oppositional defiant disorder (ODD).
- d. █████ takes medication and participates in out-patient treatment for psychotic behavior due to █████ age.

20. The IEP team decided through the RED meeting that:

- a. █████ gross motor skills and adaptive behavior were sufficient for educational purposes and were not an area of suspected disability.

- b. [REDACTED] continued to have issues with his fine motor skills, such as holding a writing utensil and writing with control. It was determined that additional data was needed in this area.
 - c. [REDACTED] demonstrated age appropriate speech errors, so additional data was not required.
 - d. Additional data was required regarding [REDACTED] language skills because it was an area of suspected disability. [REDACTED] indicated that [REDACTED] “struggles with answering ‘wh’ questions and describing items, but that [REDACTED] could answer ‘wh’ questions with 70% accuracy with mild prompting and assistance as of May 2018.”
 - e. Additional data was required regarding [REDACTED] social-emotional/behavioral impacts on his education progress because it was an area of suspected disability due to reports by [REDACTED] parents and because [REDACTED] struggled with making good choices if others around him are not being okay, he is “drawn toward disruptive and silly behavior,” he occasionally struggles with staying in his seat in the resource room, and he occasionally engaged in sensory seeking behavior.
 - f. [REDACTED] intellectual/cognitive skills needed more assessment, as it was a suspected area of disability. [REDACTED] classroom teachers noted positive behaviors in this area but he was reading below expectations. Parents reported [REDACTED] struggled with acquisition of skills practiced at home and holding on to newly learned information.
 - g. [REDACTED] health was impacting his educational progress due to difficulty maintaining attention and body control in the classroom and additional data was needed to assess [REDACTED].
21. The District decided to primarily assess [REDACTED] as follows:
- a. Health through the Attention Deficit Evaluation Scale–Fourth Edition (ADDES).
 - b. Fine Motor Skills through the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT).
 - c. Communication Skills, Language through the Clinical Evaluation of Language Fundamentals–Fifth Edition (CELF), and/or Test of Language Development–Primary: Fourth Edition (TOLD) to “assess auditory perception, expressive language and receptive language development.”
 - d. Social-Emotional/Behavior through the Behavior Assessment System for Children –Second Edition and Sensory Profile Questionnaire (BASC-2nd).
 - e. General Intelligence through the Wechsler Preschool and Primary Scale of Intelligence–Fourth Edition (WPPSI) to assess cognitive ability as well as specific areas of strengths and weaknesses.
 - f. Academics through the Kauffman Test of Educational Achievement–Third Edition (KTEA).

g. Observation of [REDACTED].

Ex. 10 at 73 and 76.

Educational Assessment Administered to [REDACTED] in Fall 2018

22. On September 20, 2018, [REDACTED] was administered the TOLD by [REDACTED]. [REDACTED] spoken language score was low average. It was noted that [REDACTED] syntactic⁹ understanding subtest was in the 2nd percentile and his attention to detail “may be a weakness.” Ex. 13 at 94. The next day, [REDACTED] again administered the syntactic subtest to [REDACTED] using frequent prompts, which is not standard testing practice and allowed [REDACTED] to learn from the first test experience. [REDACTED] received a standard score on the re-evaluation. [REDACTED] re-administered the subtest to determine whether [REDACTED] behavior may have impacted the subtest score rather than his language skills because she thought [REDACTED] skills were more advanced due to her interactions with [REDACTED]. [REDACTED] determined it was [REDACTED] behavior and not his language skills that resulted in the low score.

23. On September 26, 2018, [REDACTED] assessed [REDACTED] sensory processing abilities (one’s ability to take in sensory information, process it, and give an appropriate response). In a school setting, [REDACTED] only displayed “probable difference” or “questionable areas” in the category of sensory seeking (making noise while working and fidgeting).¹⁰ At home, through a parent questionnaire, [REDACTED] abilities fell within the 2nd or less percentile in all categories for his age.

24. On September 27, 2018, [REDACTED] was administered the CELF by [REDACTED]. The CELF assesses overall language skills. [REDACTED] scored within average range on all administered tests. The CELF, like the TOLD, evaluated [REDACTED] receptive and expressive language skills.¹¹

⁹ Syntactic is the grammatical structure of language required to comprehend its meaning. Tr. at 416.

¹⁰ In 2016, [REDACTED] tested [REDACTED] for sensory processing and found him to have scored 2 standard deviations below other children his age.

¹¹ [REDACTED] did not find a discrepancy between [REDACTED] expressive and receptive language as was found in 2016. [REDACTED] did not read the CELF and TOLD instructions before administering the tests to [REDACTED]; however, she had previously read them and was familiar with the instructions.

25. When administering the CELF, ██████ did not give ██████ the pragmatic profile subtest¹² because ██████ received an average score on his core language tests. If a student's core language is low, the subtests allow the administrator to gain additional information through subtests. ██████ did not believe the pragmatic subtest (which is an observation checklist from teachers or parents) was necessary because school personnel familiar with ██████ believed he demonstrated appropriate pragmatic skills in the classroom, such as utilizing classroom procedures, standing in line, transitioning from one task to another, using appropriate eye contact, and participating in turn-and-talk with his neighbors. Also, ██████ behavior of acting silly, modeling other students, and moving around in his seat was common kindergarten behavior, particularly in the beginning of the kindergarten year. While ██████ parents reported that their observations of ██████ pragmatic skills differed from those of school personnel, ██████ put greater weight on in-school observations.

26. On September 28, 2018, ██████ was assessed using an informal language sample by ██████, including how many words ██████ used in a sentence. ██████ was given different pictures and asked to describe them. He received a standard testing score for his age.

27. On October 1, 2018, ██████ was administered the KTEA by ██████, which tested ██████ in the areas of reading, mathematics, and written language. He received average scores in all areas except certain math concepts where he scored in the 21st and 27th percentiles.

28. On October 4, 2018, ██████ was administered the BOT by ██████. ██████ scored below average for his age on fine motor precision and integration skills, and average for manual dexterity and upper limb coordination.

29. On October 5, 2018, ██████ observed and interacted with ██████ while at lunch. She observed no areas of concern.

¹² The subtest can "assist in determining a student's academic and social language needs it [sic] in the classroom." Ex. 13 at 93. Pragmatics relate to one's social skills.

30. On October 8, 2018, [REDACTED] was assessed using the Behavior Assessment System for Children, Third Edition – Preschool Ages 2-5 (BASC) by [REDACTED]. Rating forms were filled out by [REDACTED], Parent, and [REDACTED] art, P.E., music, and library teachers (all four rated [REDACTED] collectively). It was determined that [REDACTED] was low-average for maladaptive behaviors, average on behavior strengths, and at risk (clinically significant) in all areas of behavior in the home setting based on Parent’s responses. [REDACTED] scoring of [REDACTED] was the closest to the low side of average than the other evaluators.

31. On October 12, 2018, [REDACTED] was administered the ADDES by [REDACTED], Special Education Coordinator. The ADDES tests characteristics of ADHD in an educational environment. [REDACTED] scores fell on the low side of average.¹³

32. On October 12, 2018, [REDACTED] observed [REDACTED] while students were sitting reading a book, and he worked slower than the majority of his peers.

33. On October 15, 2018, [REDACTED] was administered the WPPSI by [REDACTED]. [REDACTED] overall IQ score fell within the average range (score of 96). His visual spatial was low average. He had some “difficulty working with purely visual information” indicating visual spatial skills were an area of particular need. Ex. 13 at 103. [REDACTED] received an average score on the verbal comprehension and working memory sections.

October 2018 IEP Meeting

34. On October 30, 2018, the IEP team, including Parents, held a meeting to determine [REDACTED] continued eligibility for special education services, and an evaluation report was prepared.

The District concluded:

Based on the RED and diagnostic information, [REDACTED] **does not** “demonstrate a disabling condition in any categorical areas as specified in the Missouri State

¹³ [REDACTED] has a special education and elementary education degree, a master’s degree in reading, and an educational leadership doctorate. She has worked in special education for 14 years. She was previously a special education teacher for kindergarten through fifth grade.

Ex. 13 at 108 (emphasis added).

35. District employees did not individually sign the October 30, 2018 report. [REDACTED] did not attend the meeting, but the notice of meeting sent to Parent indicated she would attend.

36. The October 30, 2018 report stated the [REDACTED] medical records review was completed on September 7, 2018. No review was performed by the District.

IEE Evaluations

37. On November 8, 2018, Parent sent the District a letter stating, in part, that [REDACTED] was diagnosed with BDD, ADHD, FASD, Asthma, Allergies, Epilepsy, and ODD, and he takes the following medications: Adderell (ADHD), Trileptal (Epilepsy/Behavioral Dysregulation Disorder), and other medications for anemia, allergies, and asthma.¹⁴

38. On December 11, 2018, Parents had [REDACTED] evaluated by a licensed psychologist, [REDACTED], and a report was generated. The assessment procedure included a parent questionnaire and the Leiter International Performance Scale-Third Edition (Leiter or non-verbal IQ test). The report states, in part:

- a. [REDACTED] acted appropriately, but his motor activity increased as the assessment progressed, and his attention, concentration, effort and motivation decreased.
- b. [REDACTED] speech was well developed, but he had trouble answering questions and elaborating on his responses. [REDACTED] speech and language skills “appeared delayed.” Ex. 22 at 148.
- c. Parent reported [REDACTED] has trouble sleeping, has food anxiety, has difficulty regulating his emotions, over responds to situations, exhibits explosive temper outbursts approximately twice a week (before he was prescribed medication the outbursts happened 4-5 times a week), is argumentative, oppositional, denies or blames others for his behavior, is hyperactive, impulsive, and easily distracted, is forgetful, and has poor attention and concentration.

¹⁴ On November 11, 2018, Parent filed her due process complaint and requested an individual education evaluation (IEE). The District first denied the IEE request and filed a due process complaint with this Commission pursuant to 34 C.F.R. § 300.502(b)(2)(i). The District later agreed to pay for the IEE.

- d. ■ non-verbal IQ was 115 (above average).
- e. Recommendations – a) share results of testing with school; b) a functional behavior assessment be completed to identify the specific antecedents that evoke ■ behaviors; c) ■ learn self-regulation strategies; and d) a “safe place” be established for ■ in order for him to regroup and be able to implement his self-regulation strategies. A school staff member should be designated as a person ■ can have access to when he needs time to regroup.

39. Parents had ■ evaluated by Marion Hope Center for Children’s Therapy (Marion Hope), and a report was issued dated December 17, 2018. The report states:

- a. ■ was assessed based upon Child Sensory Profile 2, Parent Interview, Observation, CELF (only the subtests not performed by the District) and Language Sample.
- b. ■ was polite, appropriate, answered questions when asked, maintained eye contact, played a game with little instructions, when a fidget toy was taken away he continued to attend to his activity but his oral motor behaviors increased (moves his tongue around in his mouth), had trouble with manipulation and dexterity (separating out his index finger), the speech therapist noted he had trouble responding to rhyming questions, and he had attention and behavior issues related to sensory processing.
- c. Parents reported, in part, that ■ has a recent fear of the dark, does not like bright colors on his clothing, gets upset quickly, constantly falls and jumps on things, has poor coordination, has tantrums, trouble completing tasks, difficulty sitting at a table for meal, is a picky eater, has a hard time with play if not structured, and has a hard time reading social cues.
- d. ■ scored within the average range on all three CELF subtests (Linguistic Concepts, Word Classes, and Following Directions). ■ had age appropriate semantic knowledge. ■ scored average on the CELF Understanding Spoken Paragraphs subtest (which consists of having ■ listen to a short paragraph and have him answer questions – ■ responded “I don’t know” to 6 of the 20 questions, which may indicate he has “difficulty attending to and or understanding oral stories, but that his ability is within normal range”). Ex. F at 4.
- e. On the CELF pragmatic profile, completed by ■ father, it shows ■ had an impairment in pragmatic skills.
- f. ■ made eye contact, responded to a variety of questions, told a story about a friend who stole a power ranger in which the evaluator had to ask several questions to fully understand the details of the story, introduced new topics in conversation and sometimes without enough information, such as stating, “I’m five and the chair is four,” listened to oral instructions and played a

game, maintained a comfortable personal space, sat in a chair, and participated in testing.

- g. Findings – [REDACTED] has sensory processing issues and is a sensory seeker and avoider. He has process issues related to touch, movement, and body position, and coping, and possible behavioral issues related to sensory experiences. [REDACTED] should continue to receive occupational therapy services to help with a sensory diet and may benefit from a self-regulation program. [REDACTED] language skills are within normal range, but he may learn best when provided with ample visual supports and/or opportunities for kinesthetic and tactile learning. Structured activities that require auditory attention lasting more than just a few minutes may be difficult for [REDACTED] and may result in negative behaviors. [REDACTED] showed occasional weakness in syntax and providing sufficient details to make narratives and jokes understandable, but responded to follow up questions asked of him to clarify.

40. At Parent's request, [REDACTED] received an outpatient psychiatric evaluation dated December 17, 2018, by Spencer Harrison, M.D., at Truman Medical Center. The reported notes, in part:

- a. Parents report, in part, that before [REDACTED] was on medication he would have 3 temper tantrums a week with prolonged and intense outburst with one lasting 16 hours despite sleep in the middle.¹⁵ [REDACTED] has stolen toys from Walmart and at times pushed the dog. He struggles with understanding consequences and makes friends with children who get in trouble. He does very well in school without calls home, and struggles the most at home. [REDACTED] symptoms have been much improved since he was put on Adderall. He has learning delays in math, reading, and possibly a receptive language disorder per previous tests. He has poor eye contact when distracted, some school anxiety, and does not like reading and writing because they are hard. Parents have no overall safety concerns as [REDACTED] is a good kid, but they are interested in therapy and adding medication to help with afternoon breakthrough of ADHD symptoms.

¹⁵ [REDACTED] medical records from Cockerell McIntosy Pediatrics indicate the date of this event was September 11, 2017. A clinical note from the University of Missouri dated October 12, 2017, indicates [REDACTED] behavior improved with a change of medication. In a psychological assessment dated February 22, 2019, performed by [REDACTED], it was documented that Parent stated:

At home we have a lot of meltdowns, some days brushing our teeth with no big deal and other days it will [sic] 2 hours. Sometimes getting dressed – overstimulated or pulled away from toys. Transition from playing to bedtime – huge meltdown, banging head, tears. He seems to have a hard time understanding consequences – Get fixated on something he wants to touch – unable to control self.

Ex. W. A March 11, 2019 psychiatric OP progress note states that [REDACTED] tantrums were better and not as severe.

- b. Summary of Findings – “[redacted] history is consistent with ADHD combined type, and likely [Disruptive Mood Dysregulation Disorder] DMDD, although now that he is on meds he may not meet full criteria . . . he also likely has fetal alcohol spectrum disorder . . . parents already tried therapy before medications, so adding a booster dose of Adderall in the afternoon is appropriate . . . No acute safety concerns at this time.” Ex. 31 at 203.

February 2019

41. By February 11, 2019, [redacted] met six of his IEP goals and was making progress on the following ones:

- a. language-semantics (by 11/05/18 [redacted] will increase skills by answering “wh” questions, name 3 items in a category, and give 3 attributes of an object with 80% accuracy over 3 data days) – [redacted] achieved all of these except he needed prompting to give 3 attributes of an object;
- b. language pragmatics (by 11/5/18 [redacted] will identify at least 5 unthinkables and their behaviors, determine the size of the problem and determine what emotions are associated with each zone of regulation with 80% accuracy over 3 data days);
- c. Occupational Therapy (by 11/5/18 [redacted] will demonstrate improved fine motor skills as evidenced by cutting around basic classroom shapes with Bolds lines). [redacted] cuts in a straight line, cuts a curved line with 50% accuracy, and one day he cut a circle with 95% accuracy with initial verbal prompts; and
- d. Occupational Therapy (by 11/5/18 [redacted] will independently draw prewriting shapes including a circle, cross, and square without verbal or physical prompts as well as write the letters of his first name ...[.]) [redacted] was able to legibly write his first name and placed the letters appropriately with 60% accuracy, and he was able to draw circles with 60% accuracy, triangles with 75% accuracy, and squares with 50% accuracy.

42. [redacted] Kindergarten Progress Report for Quarters 1-3 shows that he met state kindergarten behavior standards that are required to be reached by the end of the school year (4th Quarter), and he maintained characteristics of a learner.

43. On February 12, 2019, the District held an IEP meeting with [REDACTED] Parents in attendance.¹⁶ An IEP report was generated because Parent wanted the District to consider more information. The report and meeting notes state:

- a. [REDACTED] administered the DIBELS¹⁷ to [REDACTED], which assesses [REDACTED] foundational skills for literacy such as hearing the first sound of a word, naming the letters of the alphabet, and hearing all parts of a word. [REDACTED] met all targets on the assessments.
- b. [REDACTED] also administered the Winter DRA to [REDACTED], which assessed [REDACTED] oral reading fluency and comprehension. [REDACTED] scores reflected he was at grade level expectations.
- c. Parent reported that [REDACTED] is not able to answer questions appropriately and he looks to other children to determine what he is supposed to do. [REDACTED] stated that [REDACTED] answers questions appropriately for a kindergarten student, follows simple commands, and five-year-olds typically look to their peers and follow their actions. [REDACTED] also agreed that children look to their peers before acting at this age.
- d. Parent noted that she does not observe [REDACTED] reported skills at home, such as after [REDACTED] reads a story he is unable to provide comprehensive information about the story. [REDACTED] stated that [REDACTED] provides basic answers about a story at school, and that a “why” question is a more advanced skill.
- e. Parent did not want [REDACTED] to receive less services. [REDACTED] requested that [REDACTED] stay in her general education class more time during reading if possible.
- f. Parent noted that [REDACTED] struggles with use of utensils and with buttons and zippers.
- g. [REDACTED] was meeting standards in reading, writing, math, science, and social studies, and demonstrates appropriate pragmatic skills at school such as following procedures, standing in line, transitioning from one task to the next, maintaining eye contact, maintaining personal space, and considering others’ feelings.
- h. [REDACTED] was making progress in occupational therapy and using a pencil grip. He is able to legibly write short words and sentences on line paper. He was improving on cutting a circle, and could complete buttons, snaps, and zippers on tabletop clothing.

¹⁶ [REDACTED] attended this meeting.

¹⁷ The record does not provide the full name of this assessment or the below mentioned [REDACTED].

- i. ■ received flexible seating arrangements and brain breaks, the same as other students in his kindergarten class. He participates in one sensory break.

44. In the February 2019 report, due to stay-put,¹⁸ ■ IEP goals were amended to 5 annual goals in the areas of basic reading, written expression, math problem solving, and occupational therapy (holding writing utensil efficiently and cutting out rounds shapes). He no longer had goals related to behavior or language (pragmatics and semantics). ■ was placed in his regular classroom 80% of the time, and provided daily preferential seating by the teacher, praise (just as all children receive), checks to see if he is understanding (just as with all children), sensory/fidget items as needed, and sensory breaks.

45. Parent specifically asked that Special Learning Disability (SLD) and Other Health Impairment (OHI) categories of educational disabilities be considered for ■.

46. In late February 2018, the District asked Parent a couple of times if there was any further information she wanted it to consider.

March 2019

47. On March 13, 2019, ■ was at recess and told some of his classmates that “he was going to bring a gun to school and shoot them” and “shock them with his fingers.” When asked why he made these statements, ■ mentioned that “they skipped pages when they read.” Ex. J at 1. A teacher brought this to Parent’s attention and explained that the other students were confused about why ■ was upset and one thought he was teasing, and further stated:

I always take the age of the student, as well as discipline history in mind when working with students, so [■] and I had a conversations about why his words weren’t safe etc I don’t anticipate this to be a recurring incident, as he hasn’t had this type of behavior at school before, but if it becomes a pattern of some kind we can always adjust any consequences etc . . .[.]

Id. at 1-2.

¹⁸ See 34 U.S.C. 300.518. ■ attended this meeting.

48. On March 13, 2019, the District held an evaluation meeting to discuss the new data obtained by Parents.¹⁹ Parents participated in the meeting and brought [REDACTED] full medical records for the District's review. The IEP team only reviewed the psychological evaluation.²⁰

49. The March 13, 2019 report states, in part:

- a. [REDACTED] ADDES score was average and his classroom teacher, special education teacher, and librarian indicate his attention was within normal limits compared to his peers.
- b. Standardized testing indicates that [REDACTED] had below average fine motor precision and fine motor integration skills.
- c. The CELF subtests (Linguist Concepts, Word Classes, and Following Direction) evaluated [REDACTED] semantic knowledge and he was found to be in the normal range. Per the CELF subtest for the Understanding of Spoken Paragraphs, [REDACTED] may have difficulty attending to and or understanding oral stories, but his ability is still within a normal range when compared to his peers. [REDACTED] father completed the CELF subtest for Pragmatics Profile, which is designed to identify verbal and non-verbal deficits that may negatively influence social and academic communication. [REDACTED] was found to be deficient in several areas.
- d. The District considered all potential areas of eligibility.
- e. [REDACTED] did not fit the definition of OHI because he had no adverse impact on his educational performance as it related to academic achievement as well as social/emotional skills. The District noted that "even though [REDACTED] does display some sensory concerns in the school setting his difficulties do not have significant impact nor do they warrant the need for special education." Ex. 33 at 228.
- f. [REDACTED] does not fit the definition of SLD because his grade card indicated he was meeting grade level standards in all content areas, and there was no evidence from school or outside reports that [REDACTED] was unable to meet State-approved grade-level standards in one or more of the required areas. The District did not find the discrepancy between the WPPSI and the Leiter to be significant because [REDACTED] is a verbal child, and the Leiter was not an appropriate assessment for him. The Marion Hope evaluation and the language evaluation performed by the District both indicated [REDACTED] speech and language skills were average.

¹⁹ Parent objected to the attendance of Steven Beldin, a retired special education director from North Kansas City and the Director of Innovation and Learning for the Missouri Council for Administrator of Special Education, who was invited by the District for his expertise. The District had him in attendance at the meeting.

²⁰ [REDACTED] full medical records were placed into evidence.

- g. When assessing all information, the District determined [REDACTED] did not demonstrate the need for special education services.

Additional Parental Concerns

50. Parent testified that [REDACTED] thinks everyone is his best friend and he gets hurt when children respond otherwise, and he has difficulty reading social clues such as not respecting personal space or paying attention to what other students say. She is concerned that [REDACTED] fetal alcohol syndrome disorder (FASD):

- a. Affects his pragmatic skills and the District's testing in this area was incomplete.
- b. Hinders his ability to analyze facts more deeply; while he can memorize facts, he has trouble explaining them, such as with "wh" questions.
- c. Affects his fine motor skills, such as in his artwork when compared to other students. She has observed that [REDACTED] artwork, writing, and signature fall below other students.
- d. Affects his executive functioning at home and school.
- e. Affects his anti-social aspects, such as stealing from stores, breaking things at home, and threatening to shoot or shock classmates.

51. Parent is concerned that [REDACTED] non-verbal IQ test demonstrates he has a higher level ability than is represented by his work at school. She is concerned that the District's testing should have been more comprehensive, asserting that it was inadequate, inaccurate, intentionally misleading, and done in violation of the IDEA.

52. Parent is concerned that [REDACTED] displays "confabulation [he] takes memories that are either misremembered or accurate [and] combine[s] them together to create a story[.]" Tr. at 550. For example, [REDACTED] threw a ball at home and broke a picture frame. When he was asked why he did this, [REDACTED] responded, "Because you hung my hook on the pink hook and not the Batman hook this morning." *Id.* Parent finds it hard to believe that [REDACTED] does not display more of this type of behavior at school because he has consistently done so since preschool.

53. Parent is concerned that [REDACTED] has not progressed in OT.

54. [REDACTED], [REDACTED], is one of [REDACTED] primary caregivers. He has observed that [REDACTED] has “tremendous amount of trouble in actually putting together a story in chronological order.” Tr. at 156-157.

55. [REDACTED] testified that [REDACTED] goes into “very, very angry, angry rants where he swears like a sailor and makes you believe . . . what he says.” Tr. at 157. [REDACTED] also observed that [REDACTED] cannot hold a pencil properly, has trouble explaining his actions, does not understand that everyone is not his best friend, and it takes time for [REDACTED] to learn new things, such as learning his numbers, but once he “gets it, he’s got it, but it does take a while.” Tr. at 160.

56. [REDACTED] recently attended grandparent night at [REDACTED] school and observed that [REDACTED] was “literally bouncing off the walls, more so than I had seen him do in a long time.” Tr. at 166. [REDACTED] testified that [REDACTED] was jumping around and being very excitable at grandparent night, which she stated was common. She also see this on field trips when parents are present.

57. Parent respects [REDACTED] as [REDACTED] general education teacher and is pleased with the work she has done with [REDACTED] in her classroom.

[REDACTED] *Pragmatic Skills/Social Skills*

58. [REDACTED] is not concerned with [REDACTED] pragmatic skills despite his 2016 testing; Parental concerns; the fact that [REDACTED] received IEP services in this area; and the Marion Hope pragmatic profile completed by [REDACTED] father that showed [REDACTED] in the 2nd percentile.

59. [REDACTED] testified that children:

[O]ften perform differently at school than at home and they know the rules. School is a more structured environment. Home is typically an unstructured environment. So it’s frequent that parents would say, I don’t see that at home, or - - and the school would say, you know, he’s perfect here and he’s not perfect there. It’s very typical to hear that from parents. It’s just the – it’s just the

difference between the two places are – the expectations between the two places are different. So the kids just kind of rise to those expectations.

Tr. at 460.

60. Bolds has no concerns regarding [REDACTED] pragmatic skills regarding his education performance

[REDACTED] *Language Skills*

61. [REDACTED] does not view a kindergartener who talks to everyone around him, has a hard time sitting still while reading and controlling his body at times, does not respect personal space, talks out of turn, and displays more activity and body movement in the afternoon as atypical. She testified that these are typical kindergartener behaviors, as opposed to pragmatic issues.

62. [REDACTED] testified that [REDACTED] is above average in his language skills, he can talk to her, follow directions easily, retains information quickly, is pleasant and cooperative, takes turns, is nice to others, and is socially appropriate. She does not believe his communication skills impact his ability to participate in the classroom.²¹ His pragmatic skills are very appropriate. She also testified:

The range of normal for a five-year-old is very large, and as they get older, the range of normal narrows. So ... what's typical for a five-year-old could ... answering simple questions in a simple way, or you could have the five-year-old that is telling you a paragraph, and both those things are average ... [.] Understanding who, what, when, and why is very concrete, and a "why" question can be very abstract. A five-year-old does well on concrete, and frequently will not do well on abstract because their brains just aren't developmentally there yet.

Tr. at 448-49.

63. [REDACTED] has no concerns regarding [REDACTED] communication skills. [REDACTED] can answer basic "wh" questions, but does not elaborate.

64. [REDACTED] stated that she does not believe [REDACTED] has a learning disability or that he needs special education, and he is missing out on opportunities in the general education classroom

²¹ At the hearing, [REDACTED] could not recite the standards for a child to qualify for a language impairment under the IDEA.

when he is removed to receive special education services. She believes [REDACTED] would excel in a general education setting, and would benefit by remaining in a classroom with his peers full-time.

65. [REDACTED] verbal abilities and skills are average for his age.

[REDACTED] *Medical Diagnosis*

66. [REDACTED] is not aware of any test that would look at the medical diagnosis of FASD, unlike tests that help evaluate whether a child has ADHD characteristics that are impacting his learning, such as the ADDES.

67. [REDACTED] has limited understanding of how FASD, ODD and DMDD may affect [REDACTED], but she has not observed any concerns with [REDACTED] in her classroom and would like for him to spend full-time with her. She has observed that [REDACTED] catches on to subjects quickly, retains what he knows, has no behavioral concerns, and answers questions clearly. His responses are normal for his age, and he is meeting state standards.

68. [REDACTED] opined that [REDACTED] follows directions, performs on grade level, and she sees no effects of his ADHD on the days he is at school and on medication. She does not see [REDACTED] displaying any characteristics of ODD, DMDD, or FASD at school.

[REDACTED] *OT Skills/Fine Motor Skills*

69. [REDACTED] provides [REDACTED] OT services. In October 2018, she believed [REDACTED] needed OT services, but by March 13, 2019, she did not because [REDACTED] was doing significantly better.

70. [REDACTED] is not concerned with [REDACTED] 2016 Bruininks score of 8th percentile and 2018 Peabody score of 7th percentile. She recognizes that [REDACTED] is below average on his fine motor precision and fine motor integration skills, which affects his ability to manipulate a pencil and perform cutting. However, his manual dexterity, the amount of time it takes him to do fine

motor is average. She does not know the extent to which [REDACTED] fine motor delays affect him in the classroom, but thinks it has some effect on his performance.

71. [REDACTED], the District's Director of Special Education, opined that [REDACTED] fine motor skills were not affecting his classroom performance because he is meeting all state standards, such as drawing, writing, exploratory texts, and narratives. Also, she concluded that fine motor skills alone would not qualify a student for special education because it is a related service.²²

[REDACTED] *Academic Knowledge and IQ*

72. The difference between the WPPSI and the non-verbal IQ test (Leiter) is that the WPPSI is an overall general intelligence test that contains some non-verbal subtests and visual spatial and fluid reasoning. The District was not concerned with the 20 point spread between [REDACTED] scores on the two tests because of [REDACTED] other language fundamental assessments, such as the CELF in which [REDACTED] scored in the average range, including the CELF subtests administered by Marion Hope.

73. [REDACTED] stated that the Leiter was not appropriate for [REDACTED] because he is a verbal child that thinks and expresses his thoughts with words, as opposed to a child who has language impairments, is severely autistic, has speech issues or low cognition, or if a child does not speak English. Her testing showed [REDACTED] IQ on the WPPSI was consistent with his achievements in the classroom.

74. [REDACTED] was not particularly concerned with [REDACTED] score on math on the WPPSI, which was "slightly below average." Tr. at 360.

²² [REDACTED] has a bachelor's degree with a double major in elementary education and learning disabilities, a master's degree in guidance and counseling, and an education specialist degree in special education administration. She has worked in the special education field for 28 years. She is certified in special education, school counseling, elementary principalship, and special education administration, and as a school psychological examiner. She is trained on how to give and interpret education assessments and data. She works with the Missouri and National Councils of Administrators of Special Education, and participated in over 2,000 eligibility meetings.

75. [REDACTED] and [REDACTED] assessments of [REDACTED] were consistent with his IQ score of 96 on the WPPSI.

76. [REDACTED] believes [REDACTED] is excelling despite the fact that he is not in the general classroom full time. She believes [REDACTED] can achieve satisfactorily in her classroom without special education.

77. [REDACTED] knows [REDACTED] scored below average in math on the Kaufman, but believes it is a one-time test because [REDACTED] has shown he knows the skills in kindergarten.

78. [REDACTED] testified that [REDACTED] does not struggle with understanding the material presented to him in his special education class and he is meeting all kindergarten standards in mathematics and applying the skills he has learned regularly.

79. The school librarian sees [REDACTED] approximately 50 minutes a week and occasionally at lunch. While she had some concerns about [REDACTED] behavior at the beginning of the kindergarten year, she no longer has those concerns because she “has seen a lot of growth” in [REDACTED]. Tr. at 270. She does not notice any difference between [REDACTED] and his other classmates. While kindergarteners can be impulsive, [REDACTED] will stop a behavior when he is asked.

80. The District assessed [REDACTED] in all areas of suspected disability.

81. District personnel prepared draft versions of reports prior to coming to meetings, and would have made changes to the reports if further discussion with the parents warranted a change.

82. [REDACTED] educational performance is not impaired.

Evidentiary Issues

We overrule all objections taken with the case.

Conclusions of Law

We have authority to hear this case pursuant to § 162.961.²³ The burden of proof is on the party seeking relief, in this case Parent. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Parent must prove her case by a preponderance of the evidence, which is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App. W.D. 2012).

We must judge the credibility of witnesses, as well as the weight and value of the evidence. *Faenger v. Petty*, 441 S.W.3d 199, 204 (Mo. App. W.D. 2014). We have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D. 2001). When there is a direct conflict in the testimony, we must make a choice between the conflicting testimonies. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992). Our findings of fact reflect our credibility determinations.

Overview of IDEA

A main purpose of the IDEA is to ensure children with disabilities receive a free and appropriate education (FAPE) “that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living,” and “to ensure that the rights of such children and their parents are protected. 20 U.S.C. § 1400(d)(1)(A) and (B).

The State Plan generally defines FAPE as regular and specialized special education and related services provided at public expense, under public supervision and direction without charge to the parents that meet the educational standards of the state educational agency and are provided in conformity with the Student’s IEP. State Plan, Regulation I, §, page 3; *see also* 20

²³ Statutory references are to RSMo 2016, unless otherwise stated.

U.S.C. § 1401(9) and 34 C.F.R. § 300.17.) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. 20 U.S.C. § 1401(29) and 34 C.F.R. § 300.39. “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. 20 U.S.C. § 1401(26) and 34 C.F.R. § 300.34.²⁴

Under the IDEA, only children with certain disabilities are eligible for special education. 20 U.S.C. § 1401(3)(A). The State Plan lists thirteen educational disabilities and provides the qualifying criteria for each.²⁵ Thus, there are children who may benefit from certain improvements to a skill or attribute, but who do not fit into the specific categories dictated by the law, or who may qualify under YCDD but are no longer age eligible.

Per the IDEA, the party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. 20 U.S.C. § 1415(f)(3)(B). Parent, in her amended due process complaint, generally pleads:²⁶

- a. Qualifies for Special Education Services - The District maintains that [REDACTED] ADHD does not impact him at school, but the District noted that [REDACTED] had difficulty paying attention and this has been documented since 2016 in multiple evaluations. [REDACTED] has ADHD, a fine motor disability, arguably a communication disorder, and these are clearly affecting his ability to learn. District teachers note that [REDACTED] needs frequent prompts, can barely hold a pencil, and has frequent bowel and bladder issues due to a lack of motor skills to work buttons and zippers on his pants. Removal of [REDACTED] from special education services violates the IDEA.
- b. Inadequate Language/Communication Skills Testing - [REDACTED] 2016 receptive language subtest assessment (TELD-3) had a discrepancy between his receptive and expressive scores, which was 1.5 standard deviations below the norm. Also in 2016, [REDACTED] was administered the CASL and his score was 1.5

²⁴ If a child only requires related services, and does not otherwise qualify for special education, then the child is not a child with a disability as defined by the IDEA. 34 C.F.R. § 300.8(a)(2)(i).

²⁵ The 13 categories are autism, deaf/blindness, emotional disturbance, hearing impairment/deafness, intellectual disability, multiple disabilities, orthopedic impairment, OHI, SLD, speech/language impairment, visual impairment/blindness, and YCDD. State Plan, Regulation III at 23.

²⁶ Parent also asked for an IEE at public expense, which the District later provided. She also asked for appointment of legal counsel, which this Commission denied due to lack of authority to do so.

standard deviations below the norm. In 2018, the District only administered to [REDACTED] the CELF core subtests and not the remaining subtests despite [REDACTED] prior language assessments. [REDACTED] has a history of ADHD, which affects his ability to understand and follow directions, and he engages in excessive talking, movement, and difficulty maintaining eye contact, which are clear pragmatic issues, yet no pragmatic testing was done. [REDACTED] should be further tested in the areas of receptive and expressive language.

- c. Inadequate ADHD and BASC Testing - When the District administered the ADDES to [REDACTED] in 2018, no evaluating teacher was board certified in behavior analysis and one evaluator, the librarian, had little contact with [REDACTED]. It is documented that [REDACTED] has ADHD and has been prescribed two medications for ADHD. The BASC results are questionable, with inconsistent evaluation results. [REDACTED], who spends the most time with [REDACTED], consistently scored [REDACTED] 10 plus points higher than the other evaluators.
- d. Inadequate Fine Motor Skills Testing – Parent stated that the District provided intentionally misleading and inadequate testing and interpretation per 34 C.F.R. 300.620 because [REDACTED] fine motor skills were repeatedly tested (DIAL on 9/1/16, PDMS on 10/10/16, and BOT on 10/4/18) and found to be below average. The District should have performed additional testing to determine [REDACTED] fine motor skills and level of disability and eligibility for special education services. [REDACTED] fine motor skills have not improved despite his current therapy, and removing him from special education services violates FAPE.
- e. Request Legal Counsel – Parent requested legal representation because [REDACTED] comes from “a modest family who have modest means” and the IDEA discriminates against “children from poor families.” The District used tax money to pay for legal representation and [REDACTED] parents have paid considerable funds to ensure that he receives an appropriate education and this is a violation of [REDACTED] civil liberties per *Brown v. Board of Education of Topeka* because it is unconstitutional to bar a child from learning because of an unalterable characteristics such as [REDACTED] disabilities, African American heritage, and social economic status.

We address each of Parent’s allegations below.

[REDACTED] *Eligibility for Special Education Services*

In 2016, at the age of three, the District found [REDACTED] to be a YCDD in the areas of cognitive, adaptive, social/emotional, communication and physical. When [REDACTED] started kindergarten, his teachers noted that he was making progress on his IEP goals, and was “making leaps and bounds at home.”

By September 2018, [REDACTED] was recalling practiced facts better, followed classroom rules, and was generally well mannered at school. He did not display concerns in the areas of gross motor skills or speech, and his adaptive behavior was within normal ranges. However, per the school librarian, [REDACTED] still had trouble staying still, controlling his body at times, maintaining personal space, and taking turns talking. Per his special education teacher, he sometimes had difficulty comprehending what was being asked of him, needed directions given to him in different ways at times, and engaged in some sensory seeking behavior. Also, he was reading below grade level, could lag behind in art class at times, and at home had trouble reciting past events, fell out of his chair a lot, had meltdowns, and could be destructive to himself, others, and property.

In the fall and winter of 2018, the District administered to [REDACTED] several assessments. [REDACTED] scores were in the average range, some low average, for children his age in all areas except syntactic understanding, some aspects of math, his fine motor precision and integration, pragmatics (per Parents), making noise and fidgeting while working (sensory seeking behavior), and working slower than most peers while reading a book.

By February 2018, [REDACTED] IEP goals were reduced to five in the areas of reading, writing, math, and occupational therapy (holding a writing utensil). He no longer had any language goals. By third quarter of his kindergarten year, [REDACTED] met all state behavior and academic standards that kindergarteners are expected to achieve by the end of the school year. [REDACTED] general education and special education teachers both opined that [REDACTED] did not require special education services and he would be better off in a regular classroom 100% of the time.

IEE assessments indicated that [REDACTED] generally acted appropriately, but he needed to improve his self-regulatory skills, attention, concentration, effort and motivation, fine motor,

skills, some aspects of his communication (such as elaborating on his responses), and he sought out sensory input.

■■■■ IQ fell within the normal range. His non-verbal IQ test was higher than his general IQ test, but there is no evidence that ■■■■ was working below his abilities. Furthermore, a non-verbal IQ test was not an appropriate test in ■■■■ situation because he was a verbal child. In her brief, Parent argued the applicability of a case issued by this Commission involving *Liberty School District v. B.G.* (Mo. Admin. Hearing Comm., August 2018) (a school district filed a due process hearing requesting consent to override and re-evaluate a child and it was found that a discrepancy of 21 points between two general intelligence tests is rare). The facts and evidence relied upon in that case are different from the evidence in this case. Here we have a discrepancy between a general intelligence test and a non-verbal test, and the non-verbal was not appropriate for ■■■■. Furthermore, this Commission's previous decisions do not have precedential authority. *Central Hardware Co. v. Director of Revenue*, 887 S.W.2d 593, 596 (Mo. banc 1994).

The IDEA informs us that we must evaluate all of the information pertaining to ■■■■ to determine if he is a child with an educational disability. While there is contradictory evidence to support both parties' arguments, we must focus on the evidence as a whole to determine if Parent met her burden of proof. The weight of the evidence supports that ■■■■ is not a child with an educational disability, which we discuss in more detail below. The IEE assessments do not generally state how ■■■■ does compared to his peers. While they address weaknesses, they do not generally discuss what is typical or atypical for a kindergartener. The IEE results also did not take into consideration the difference between ■■■■ behavior at home versus school, which is notable, and many of the conclusions, such as the Marion Hope evaluation that concluded that ■■■■ language skills are normal, support the District's position in the case.

Below, we address Parent's more specific allegations in her amended complaint regarding [REDACTED] ADHD, fine motor and communication skills, and eligible under SLD, OHI, and speech and language impairment.²⁷

[REDACTED] ADHD

Specifically, Parent pleads that the District improperly found that [REDACTED] ADHD did not impact him at school. However, the consistent testimony from school personnel was that [REDACTED] behavior is age appropriate and does not impact his educational performance or ability to learn. The evidence established that [REDACTED] behavior improved as the kindergarten year progressed. For example, at the beginning of the year, [REDACTED] art teacher found that he had trouble controlling his body, and his special education teacher found at times he had trouble with comprehension. This was not the case by March 2019. In addition, while [REDACTED] seeks out sensory input, the consistent testimony is that this does not interfere with his learning.

Furthermore, [REDACTED] generally acted appropriately during his IEE assessments, but it was noted during the psychological evaluation that [REDACTED] activity increased, and his concentration, effort and motivation decreased as the assessment progressed. Both assessments noted sensory seeking behavior. Both IEE reports recommend that [REDACTED] learn self-regulation strategies, and Marion Hope recommended OT services to help with a sensory diet. As discussed above, these evaluations do not conclude by a preponderance of the evidence that the school personnel are incorrect when they state that [REDACTED] ADHD does not affect his educational performance beyond that of any other kindergartener. As stated by [REDACTED], the average range of behavior for a five-year-old is broad. Children at that age move around in their seat, have trouble maintaining

²⁷ In a response to an interrogatory propounded on Parent by the District, Parent stated that she is only pursuing OHI and SLD. We also address language impairment so as to address all related issues in Parent's complaint.

personal space, talk out of turn, talk to children around them, and look to their peers as to how to act.

█ parents clearly experience more severe behavior at home. Parent and Grandparent expressed concerns in the home environment, and █ made a threat to his classmates that raised the concern of a teacher. █ benefits from medication and has medical diagnoses that can cause behavioral issues in school. However, the evidence does not establish that █ manifests these negative behaviors in school outside of the norm or that his cognitive abilities are outside the norm. Several of his teachers testified that █ ADHD does not affect him at school when he takes his medication. As noted by █ teacher, his comment to his classmates was not appropriate, but he has not displayed this type of behavior before.

█ behavior at school will need to be monitored by the District and Parent as he progresses in school and the school day becomes more structured and demanding. While at this point █ may not qualify for special education services, this does not mean he may not qualify in the future. We find that Parent has not met her burden of proof and has not established that the District improperly concluded that █ ADHD did not impact him at school.

█ Fine Motor Skills

Parent also pleads that █ fine motor skills affect his ability to learn. In 2016, █ IEP provided him weekly special education for fine motor and occupational therapy. In May 2018, the District continued █ fine motor special education and decreased his occupational therapy. Also, █ goals became more advanced. In September 2018, during the RED meeting, the District acknowledged that █ continued to have issues with his fine motor skills related to his ability to write. In October 2018, through the BOT, █ fell below average for his age on fine motor precision and integration skills, but he was average for manual dexterity and upper limb coordination. When █ was tested by Marion Hope in December 2018, he had

trouble with manipulation and dexterity (separating out his index finger); however, there was no overall finding regarding [REDACTED] fine motor skills. By March 13, 2019, the District concluded that there was no indication that [REDACTED] fine motor skills were affecting his educational performance at school or that his abilities fell below children his own age.

[REDACTED] fine motor skills improved in kindergarten, but they are still below average per the District's own records as it relates to his ability to use a writing instrument and scissors. However, his weakness in this area is not impacting his educational performance or his ability to achieve state standards, which includes drawing and writing. While there may be room to improve, by February 2019, [REDACTED] could legibly write short words and sentences on line paper, was improving on cutting a circle, and could complete buttons, snaps, and zippers on tabletop clothing. Also, occupational therapy is a related service.

We find that Parent did not meet her burden of proof to establish that [REDACTED] fine motor skills affect his ability to learn.

[REDACTED] Language/Communication Skills

With regard to [REDACTED] language/communication skills, [REDACTED] 2016 IEP provided him communication and language instruction weekly. By October 13, 2017, [REDACTED] met one IEP goal and was making progress on the other goal. In the May 2018 IEP, the District increased [REDACTED] communication instruction in pragmatics and decreased his minutes related to semantics. In September 2018, during the RED meeting, the District determined it needed to further test [REDACTED] communication skills.

[REDACTED] assessed [REDACTED] communication/language skills by administering the CELF and the TOLD. [REDACTED] CELF score, which assessed overall language skills, was average for his age. On the TOLD, [REDACTED] spoken language score was low average, his syntactic understanding subtest score fell within the 2nd percentile, and his attention to detail was identified as a possible

weakness. ██████ re-administered the syntactic understanding subtest the next day, and ██████ scored in the average range, which was consistent with her personal observations, but could not be used as an official score. The District further administered the DIBELS and DRA, which found ██████ to be on target for his age.

In December 2018, ██████ underwent a psychological assessment at Parents' request, and it was found that ██████ speech and language skills "appeared delayed" and he had trouble answering questions and elaborating his responses. Ex. 22 at 148. However, the parental evaluation performed by Marion Hope determined that ██████ language skills were within normal range, but he learned best with visual support.

By February 11, 2019, ██████ made progress on his IEP goals for communication. He met his semantics language goal of answering "wh" questions at 80%, and he could name 3 items in a category at 80%, but he could only independently give 2 attributes (not 3) of an object at 80% with prompting. With regard to his pragmatics language goal, he was making progress. He could identify 4/5 unthinkables, determine if a problem was big or little with 70% accuracy and determine the related emotion.

By third quarter of his kindergarten year, ██████ met all of the District's year-end learning standards for English Language Arts, including foundational skills, print awareness, phonemic awareness, phonics, reading fiction with assistance, reading non-fiction with assistance, language, and writing.

Again, while there is contradictory evidence that support both parties' arguments, we find that the weight of the evidence is that ██████ communication and language skills are not impacting his ability to learn.

Educational Disabilities: SLD, OHO and
Speech and Language Impairment

After the District determined [REDACTED] was not eligible for special education services in October 2018, Parent asked the District to specifically reconsider [REDACTED] as a child with OHI or SLD. Also, in her amended complaint, Parent specifically raised issues with OHI, SLD and Speech and Language Impairment. We address each of these below.

SLD

Per the State Plan, SLD is defined as:

a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental; or economic disadvantage; or, limited English proficiency.

State Plan, Regulation III, Section B at 27. Per the State Plan, the specific criteria that must be met to be a child with a SLD includes:

- (1) The child does not achieve adequately for the child's age or to meet State approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State approved grade-level standards:
 - a. Oral Expression
 - b. Listening Comprehension
 - c. Written Expression
 - d. Basic Reading Skill
 - e. Reading Fluency Skills
 - f. Reading Comprehension
 - g. Mathematics Calculation; and,
 - h. Mathematics Problem Solving

- (2) The child does not make sufficient progress to meet age or State approved grade-level standards in one or more of the areas identified in A above when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of

strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR 300.307-300.311. A pattern of strengths and weaknesses is defined as a severe discrepancy between achievement and intellectual ability of at least 1.5 standard deviations; and,

- (3) The group determines that its findings under A and B of this section are not primarily the result of:
 - a. A visual, hearing, or motor disability;
 - b. Intellectual disability;
 - c. Emotional disturbance;
 - d. Cultural factors;

Professional Judgement

If a responsible public agency uses a severe discrepancy method: A child who does not display a discrepancy of at least 1.5 standard deviations as defined in B above, may nonetheless be deemed to have a specific learning disability if:

- (1) The child meets the other criteria of this rule; and
- (2) Based upon professional judgment and review of formal and informal assessments, the evaluation team concludes that a severe discrepancy exists.

Id. at 28-29.

Parent has not established that: a) ■■■ is not achieving adequately for his age or meeting State approved grade-level standards in the identified educational areas; and b) ■■■ is not making sufficient progress to meet age or State approved grade-level standards in one or more of the identified areas. In addition, courts have routinely afforded deference to the expertise of school officials responsible for a child’s education when they offer a “cogent and responsive explanation for their decisions.” *Endrew F. ex rel. Joseph F. v. Douglas County School. Dist. RE-1*, 137 S.Ct. 988, 1001-1002 (2017).

OHI and Speech and Language Impairment

Per the State Plan, OHI is defined as follows:

means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.

Id. at 27. The specific criteria that must be met to be a child with an OHI:

- (1) A health impairment has been diagnosed by a licensed physician, licensed psychologist, licensed professional counselor, or licensed clinical social worker, or school psychologist, and
- (2) The health impairment adversely affects the child's educational performance.

Id. Also, per the State Plan, Speech and Language Impairment is determined to be present, in relevant part, when:

- (1) The child consistently exhibits inappropriate use in any of the structures of language (e.g., morphology, syntax, semantics, and pragmatics) as measured by language sampling or other clinical tasks;
- (2) The child's language functioning is significantly below the child's abilities as measured by two (2) or more standard language assessments. Significantly below is defined as . . . 1.5 standard deviations below cognitive ability for children who are kindergarten age eligible and older;
- (3) The language impairment adversely affects the child's educational performance; and,
- (4) The language impairment is not a result of dialectal differences or second language influence.

Professional Judgement

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a language impairment is present even though the standard scores do not meet the criteria . . . [.]

Id. at 29.

Both OHI and Speech and Language impairment require that a student's health or language impairment adversely affects his educational performance. Neither the IDEA nor the State Plan defines "educational performance." In *Hansen ex. Rel. J.H. v. Republic R-III School*

Dist., 632 F.3d 1024 (8th Cir. 2011), the court discussed a child’s educational performance in terms of the student’s ability to learn. *Hansen*, 632 S.W. at 1028 (finding that a student met statutory definition of “child with a disability” under the IDEA based on hyperactive, impulsive, and inattentive behavior which “severely impaired his ability to learn.”); *see also, Indep. Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769, 777 (8th Cir. 2001) (the court determined that “[i]f the problem prevents a disabled child from receiving educational benefit ... [w]hat should control our decision is not whether the problem itself is ‘educational’ or ‘non-educational’ but whether it needs to be addressed in order for the child to learn.”)

Parent has not met her burden to establish that [REDACTED] health conditions, speech or language skills affects his ability to learn at school. For example, the evidence supports that [REDACTED] has the characteristics of a learner, is meeting state standards, is reading now at grade level, catches on to subjects quickly and retains information, and answers clearly and responds normally to questions for a child in kindergarten.

Allegations of Procedural Violations

In her post-hearing brief, Parent also argued, in addition to the procedural violations addressed above, that the following impacted the District’s decision to deny RD IDEA services:

a) the District impeded [REDACTED] parents’ input because it predetermined [REDACTED] eligibility prior to the start of any meeting with parents by preparing its IEP reports ahead of time, and otherwise failed to properly consider their input; b) the District inappropriately placed the burden on Parent to identify [REDACTED] educational disability; c) the District did not use assessment tools and strategies that provide relevant information because the majority of the subjective information came from [REDACTED] and [REDACTED]; d) [REDACTED] had limited background on symptoms associated with FASD, and ADHD combined type; e) the District’s assessment did not consider [REDACTED] available diagnoses, health history, and specific health needs in both the October 30, 2018 and March 13, 2019

meetings because they only relied upon the fact that [REDACTED] was achieving academic standards and never tailored the assessments to his needs; f) [REDACTED] and [REDACTED] were not credible since both altered documents and knowingly made false statements in the documents; and g) [REDACTED] wrote on the signing sheet that “parents attended but chose not to sign” although [REDACTED] did not attend the meeting and she could not recall who told her that [REDACTED] parents refused to sign. Parent also argues that if the District is willing to alter attendance records, who is to say it did not alter testing and evaluation reports, such as adding the incorrect statement in the October 30, 2018 report that states the medical records were reviewed when in fact they were not.

The District was required to keep an open mind and consider parental input before reaching its final decision. Parent correctly cited to *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017) and *R.L. v. Miami-Dade Co. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) (“Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team”).

District personnel testified that they prepared draft versions of reports prior to going to meetings. They prepared preliminary IEP evaluations and provided copies to the IEP teams, including parents. This is not uncommon, and District personnel stated they would have made changes to the reports if further discussion with the parents warranted a change. In fact, they considered parental input and IEE material after their initial determination in October 2018. We do not find that the District failed to properly consider parental input when it made its decision or engaged in predetermination.

Likewise, we do not find that District personnel placed the burden on parents to determine under which disabilities [REDACTED] may qualify. The District performed extensive assessments of [REDACTED] in all areas of suspected disabilities and used a variety of tools, including subjective analysis from key teachers associated with [REDACTED].

█████ admitted that she is not an expert in █████ medical conditions; however, under OHI, the ultimate question is whether █████ medical conditions adversely affect his educational performance. As addressed above, while █████ may have some weaknesses, as do all children, they are not impacting his education performance or ability to learn at this time. However, this is not to say that █████ medical conditions may not impact him in the future as school becomes more structured and course work more difficult. However, no such impact is occurring now, and Parent can always request a future evaluation of █████.

We do not find that the District intentionally altered documents or that any incorrect or unclear statements found in █████ education records impeded █████ right to FAPE, significantly impeded parents' opportunity to participate in the decision-making process, or caused a deprivation of educational benefit.

In summary, in October 2018, the District completed a full and comprehensive evaluation of █████ in all areas of his suspected disabilities. The District used a variety of appropriate tools and strategies to gather relevant functional, developmental, and academic information, including input from █████ parents. The District did not use a single measure or assessment as its sole criteria in denying █████ special education services. Instead, it collectively evaluated all its information before rendering a decision. The District personnel have significant education and experience in their fields of expertise. While there may have been some procedural errors, they did not impact Parent's rights or █████ right to FAPE as more fully explained above.

District's Testing of █████

IDEA Testing Overview

The IDEA required the District to assess █████ "in all areas of suspected disability" and "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent." 20 U.S.C. §

1414(b)(2)(A) and (3)(B). The District cannot use “any single measure or assessment as the sole criterion for determining whether a child is a child with a disability.” 20 U.S.C. § 1414(b)(2)(B). The District’s evaluation of [REDACTED] must have been sufficiently comprehensive in order to identify all of [REDACTED] special education and related service needs. 34 C.F.R. § 300.304(c)(7); *see also* 34 C.F.R. § 300.303. The District was required to administer [REDACTED] evaluation in a manner that was “most likely to yield accurate information on what [REDACTED] knows and can do academically, developmentally and functionally.” 20 U.S.C. § 1414(b)(3)(A)(ii). District evaluators were also required to use technically sound instruments that “are used for the purposes for which the assessments or measures are valid and reliable” and administer the assessments “in accordance with any instructions provided by the producer of such assessments.” 20 U.S.C. § 1414(b)(3)(A)(iii) and (iv). The evaluators must also have been trained and be knowledgeable personnel. 20 U.S.C. § 1414(b)(3)(A)(iv).

These testing requirements are important to ensure that an evaluation is performed properly. However, not every procedural violation amounts to a denial of FAPE; to do so, the violation must impede the child’s right to FAPE, significantly impede the parent’s opportunity to participate in the decision-making process, or cause a deprivation of educational benefit. 34 CFR § 300.513(a)(2).

Assessment of [REDACTED] Language/Communication Skills

Based on the overall evidence, we cannot find, as pled by Parent, that the District provided inadequate testing of [REDACTED] language, communication, or pragmatic skills, or should have further tested [REDACTED] receptive and expressive language skills. The District administered the CELF and TOLD and performed an informal evaluation of [REDACTED]. The CELF and the TOLD evaluated, in part, [REDACTED] receptive and expressive language skills.

With regard to [REDACTED] syntax skills, [REDACTED] believed [REDACTED] subtest score to be an anomaly. She did not follow testing standards, but this was to confirm her personal observations. While this alone may not be enough to determine [REDACTED] syntax skills are age appropriate, the weight of the evidence established that any weakness [REDACTED] may have in this area is not affecting his education performance. In addition, the District did not fail to administer the CELF subtests. Further, Parent's evaluation of [REDACTED], through Marion Hope, determined that [REDACTED] CELF subtest for linguistic, concepts, word classes, following directions, and understanding spoken paragraphs were all age appropriate. Overall, Marion Hope found [REDACTED] language skills to be within normal range, but he may learn best with ample visual supports and with kinesthetic and tactile learning opportunities. No further testing was needed to address [REDACTED] language, communication or pragmatic skills.

In her post-hearing brief, Parent raised additional procedural violations associated with the District's evaluation of [REDACTED] communication skills. While these procedural violations were not pled in her amended complaint, we discuss them below because Parent primarily uses them to bolster her argument that the District's testing was inadequate, inappropriate, or incorrect.

Parent argues that the District's evaluation into [REDACTED] communication skills was flawed because: a) [REDACTED] was absent from the October 2018 evaluation meeting despite the fact that she is an important team member; b) [REDACTED] did not read the instructions before administering the CELF and TOLD; c) [REDACTED] admitted that she did not know what the standards were for a child to qualify for a language impairment under the IDEA, yet she was the one responsible for determining if RD qualified; d) [REDACTED] testified [REDACTED] qualified for such disability because he met the semantics and pragmatic scores 4 and 2, pursuant to the Marion Hope evaluation; e) no one signed the SLD report, which is required; f) [REDACTED] could not recall what areas she was giving [REDACTED] in therapy; f) no objective measure was given to [REDACTED] to assess his pragmatics; g) [REDACTED]

testified she relied upon [REDACTED], yet none of the evaluation forms contain information from [REDACTED] regarding [REDACTED] pragmatic skills.

While the October 30, 2018 report contains [REDACTED] assessment finding, [REDACTED] was not present at the meeting despite the notice indicating she would be present. [REDACTED] is a key member of [REDACTED] IEP team; however, the decision to deny [REDACTED] special education services at the meeting was not final because the District agreed to continue to review information regarding [REDACTED] at Parent's request. [REDACTED] was involved in the subsequent discussions, provided additional input, and Parent had the opportunity to discuss [REDACTED] communication issues with [REDACTED] at the March 13, 2019 meeting. While [REDACTED] absence may have been a procedural violation, we do not find that it impeded [REDACTED] right to FAPE, significantly impeded Parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. In addition, the fact that District employees did not sign the October 30, 2018 or the May 13, 2019 report was likewise not prejudicial because the employees' written summaries were consistent with their testimonies at the hearing, and Parent made no substantive argument as to why the lack of signatures was prejudicial. Instead, Parent uses this fact to argue that this is partial evidence that the District altered documents, misrepresented information, and intentionally or inaccurately found [REDACTED] not eligible for special education services. We do not find the District engaged in these behaviors. District personnel provided rational explanations for their decisions, they have documented expertise, and the weight of the evidence supports their findings.

At the hearing, [REDACTED] testified that she provided [REDACTED] with IEP services in semantics and syntax instead of pragmatics and semantics, and she was unable to recite the specific state guidelines for a child to qualify for a speech and language impairment. Also, she did not read the TOLD and CELF instructions before administering the tests to [REDACTED], which we do not find to be concerning because of her years of experience. Also, [REDACTED] IEP goals changed in February

2019, and his language goals were eliminated. We do not find [REDACTED] actions to have had a substantive effect in this case.

In addition, [REDACTED] acknowledged that the Marion Hope finding that [REDACTED] pragmatic score was in the 2nd percentile clinically significant. However, this score was based solely on [REDACTED] father's observations. [REDACTED] acknowledged that parental input is important, but she put more weight in the observations of [REDACTED] in the school environment where he was not displaying pragmatic (social skill) concerns. Also she testified that there is not a good pragmatic assessment outside of direct observations of a child.

Parent also argues that the statement in the 2018 IEP that [REDACTED] scored average "on all subtest given" for the CELF is misleading and indicates that [REDACTED] was provided all subtests and not just the core tests. In the IEP, the raw scores were provided on the core subtest, which indicates the pragmatic subtest was not performed. While the sentence in the IEP summary could have been written with more clarity, we do not find the District was intentionally trying to mislead or confuse Parents.

Parent has not established that the District's methodology in evaluating [REDACTED] communication/language skills violated the IDEA. The District: a) performed multiple assessments of [REDACTED] language/communication skills by an experienced speech and language pathologist; b) considered input from school personnel, including [REDACTED] general and special education teachers; c) evaluated his progress on his IEP goals; d) reviewed the Marion Hope report; d) obtained input from Parents; and e) reviewed his full educational records. The District did not review all of [REDACTED] medical records, but we do not find, based upon our review of the records, that it impeded [REDACTED] right to FAPE, significantly impeded Parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefit.

Parent's concerns do not establish that [REDACTED] or the District failed to properly and fully evaluate [REDACTED] communication skills.

In her brief, Parent requested that [REDACTED] testing including CELF and TOLD be struck from the record due to [REDACTED] incompetency. We deny the request.

ADDES and BASC Testing

On October 12, 2018, [REDACTED] was administered the ADDES by [REDACTED]. The test is designed to evaluate characteristics of ADHD. [REDACTED] score fell on the low side of average. In her amended complaint, Parent argues that none of the teachers who evaluated [REDACTED] for purposes of the assessment were board certified in behavioral analysis, and the librarian had limited access to [REDACTED]. There is no evidence in the record that evaluators assisting with the ADDES must be board certified in behavioral analysis or that several teachers could not collectively evaluate a student. In addition, while the librarian may have spent limited time with [REDACTED], [REDACTED] also received individual input from [REDACTED] and [REDACTED], and Parent's input was considered by the District.

Parent also argues that [REDACTED] BASC results were questionable and inconsistent because [REDACTED] general classroom teacher consistently scored [REDACTED] 10 plus points higher than the other evaluators. With both the ADDES and the BASC, [REDACTED] raw scores were generally closer to the low side of average than the other teachers; however, Hendrix's scores were still within the average range.

Parent did not meet her burden that the BASC results were questionable or inconsistent evaluations were performed.

In addition, Parent in her brief requested that the ADDES evidence be stricken from the records because it was not performed per the manufacturer's guidelines and was performed in an incompetent manner with tampering. We deny this request. The manufacturer's guidelines were never introduced into evidence and no sworn testimony was offered.

Fine Motor Testing

As discussed more fully above, we do not find that the District intentionally misled or inadequately tested [REDACTED] fine motor skills as pled by Parent. Likewise, we do not find that the District should have further tested such skills. [REDACTED] abilities in this area are well documented in the record.

Right to Counsel and Violation Civil Liberties

We deny Parent's request for legal counsel, as we have no authority to appoint counsel, and we recognize the constitutional issue raised by Parent. As an administrative agency, we only have the authority granted to us by statute and any regulation promulgated within the authority of statute. *Lagares v. Camdenton R-III School District*, 68 S.W.3d 518, 526-27 (Mo. App. W.D. 2001), citing *Pen-Yan Inv., Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 303-04 (Mo. App. W.D. 1997). The IDEA, Chapter 162, RSMo, and the applicable federal and state regulations do not provide this Commission with authority to appoint counsel for Parent.

Summary

We deny Parent's due process complaint on grounds that the District did not violate the IDEA when it found [REDACTED] not to be a child with an educational disability.

SO ORDERED on May 3, 2019.

RENEE T. SLUSHER
Commissioner

Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per §162.962, when a review of this decision is sought, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
 - (a) Receive the records of the administrative proceedings;

- (b) Hear additional evidence at the request of a party; and
 - (c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence.
- (2) Appeals may be taken from the judgment of the court as in other civil cases.
- (3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;
- (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same.
- (5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal and time limit is addressed in 34 C.F.R. §300.516.