

**BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION**

IN THE MATTER OF:

██████ *the Student, and*
██████ *the Student's parent,*
██████ *Petitioners,*

v.

**RUTHERFORD COUNTY
BOARD OF EDUCATION,**
Respondent.

DOCKET NO: ██████████

FINAL ORDER

This matter was heard in ██████████ Tennessee on ██████████ and ██████████
██████████ before Leonard Pogue, Administrative Law Judge, assigned by the Secretary of State,
Administrative Procedures Division pursuant to T.C.A. § 49-10-606 and Rule 520-1-9-.18, Rules
of State Board of Education. Petitioner ██████████ student, and ██████████ parent, were represented by
attorney ██████████. Attorneys ██████████ and ██████████ represented Respondent
Rutherford County Board of Education (RCB). This matter became ready for consideration upon
the filing of proposed findings of fact and conclusions of law by Petitioners (██████████
██████████) and Respondent (██████████).

██████████ mother, ██████████ initiated this due process hearing on ██████████, alleging that
RCB refused to deem ██████████ eligible for special education services. On ██████████ leave
was granted Petitioners to file an Amended Due Process Complaint wherein Petitioners further
alleged that RCB failed to timely and properly test ██████████ despite ██████████ requests to do so and
failed to offer or provide Extended School Year services to ██████████. On ██████████ leave was

granted Petitioners to file a Second Amended Due Process Complaint wherein Petitioners further alleged that RCB denied Petitioners certain procedural rights. Petitioners have requested past and future compensation for private tutoring expenses, reimbursement for Petitioners' expenses in obtaining a psychoeducational evaluation, and speech language therapy costs associated with Petitioner's current educational setting.

After consideration of the entire record, testimony of witnesses, and the arguments of the parties, it is determined that Respondent is in compliance with IDEA procedures, has not committed any procedural or substantive violations of IDEA, and Respondent did not fail to timely evaluate or fail to identify [REDACTED] as a student with a disability under IDEA. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. [REDACTED] attended [REDACTED] Elementary School ([REDACTED] from [REDACTED] ([REDACTED] through the first semester of [REDACTED] grade year (fall [REDACTED]).
2. [REDACTED] started in [REDACTED] Response to Intervention (RTI) program for reading in the [REDACTED] grade. [REDACTED] was implementing a RTI model before RTI² became a state mandated initiative in [REDACTED]. The RTI program provides 3 tiers of interventions for students that are struggling in the general education program.
3. At the beginning of her [REDACTED] year, [REDACTED] did not do well on the Benchmark test administered by [REDACTED]. According to [REDACTED] teacher, [REDACTED] told [REDACTED] that [REDACTED] should write a letter to [REDACTED] and ask them to test [REDACTED] wrote a letter requesting that [REDACTED] be tested.
4. In response to [REDACTED] request, RCB sent [REDACTED] a developmental history form to complete on [REDACTED] and scheduled a Student Assistance Team (SAT) meeting for [REDACTED]

2012. The SAT meeting was rescheduled at M.C.'s request and was held on [REDACTED] [REDACTED], [REDACTED] principal, [REDACTED] and S.C.'s Interventionists, [REDACTED] and [REDACTED] [REDACTED] discussed that [REDACTED] was making good progress in RTI, that there was no need to test her, and that her progress would be monitored.

5. [REDACTED] received RTI interventions for reading and math at Tier 2 and primarily Tier 3 during her [REDACTED] grade school year. For most of that school year, she received Tier 2 small group reading instruction in the classroom approximately 60 minutes weekly and Tier 3 pull out reading intervention in a small group of no more than five students for typically 90-120 minutes weekly. She participated in small group math instruction as needed when falling below proficiency on math assessments.

[REDACTED]

7. At the end of the [REDACTED] grade, [REDACTED] TCAP scores were on the low end of the "Basic" range in Reading/Language Arts and Math. Her TCAP scores in Science and Social Studies were "Below Basic" and "Below Proficient," respectively. Principal [REDACTED] testified that at the end of [REDACTED] grade year, about 50 percent of the students attending [REDACTED] scored below proficiency levels in reading, which is slightly above average for the State of Tennessee.

On [REDACTED] grade report, [REDACTED] received C's and a D in all non-special subject areas while receiving all A's in Art, Music, and PE.

8. Principal [REDACTED] called [REDACTED] on the second to last day of [REDACTED] grade year and recommended that [REDACTED] be retained in [REDACTED] grade because he was concerned that she was not academically ready for [REDACTED] grade. After discussing [REDACTED] concerns with retention, Principal [REDACTED] acceded to [REDACTED] wish to promote [REDACTED] to the [REDACTED] grade with her twin sister. Principal [REDACTED] did not believe that [REDACTED] needed to be tested at the end of her [REDACTED] grade year because she had made progress in RTI. Principal [REDACTED] and [REDACTED] also discussed [REDACTED] seeing her pediatrician to rule out medical issues, getting [REDACTED] tutoring over the summer, and initiating an IDEA evaluation at the start of the next school year.

9. [REDACTED] began going to [REDACTED] ([REDACTED]) for tutoring in [REDACTED]. Also in the summer of [REDACTED] her pediatrician referred her to [REDACTED] Center ([REDACTED]) for a language evaluation.

10. On [REDACTED], at the beginning of [REDACTED] [REDACTED] grade school year, [REDACTED] emailed Principal [REDACTED] to inform him that [REDACTED] was scheduled to have private testing at [REDACTED] and asked whether the school should move forward with its testing or if it preferred to wait to test [REDACTED] until the [REDACTED] testing was completed. Principal [REDACTED] responded that RCB would prefer to wait until Vanderbilt completed its language testing and asked if [REDACTED] agreed with that decision. [REDACTED] responded that it was "perfectly acceptable" to wait to test [REDACTED] until the [REDACTED] assessments were completed.

11. [REDACTED] continued to receive RTI interventions for reading and math at Tier 2 and 3 while in [REDACTED] grade during the [REDACTED] school year.

12. On [REDACTED] [REDACTED] emailed the [REDACTED] school counselor, [REDACTED] Principal [REDACTED] and others at the school the results of the [REDACTED] language testing (performed by [REDACTED] and which diagnosed [REDACTED] with a [REDACTED] [REDACTED] and further advised that [REDACTED] pediatrician recommended [REDACTED] [REDACTED]

13. A SAT meeting was held on [REDACTED]. The SAT team members included [REDACTED] Principal [REDACTED] a Speech Language Pathologist at [REDACTED] [REDACTED] a school psychologist, a part-time counselor, the assistant principal, and several teachers/interventionists. The team discussed [REDACTED] evaluation, [REDACTED] progress, and additional strategies to assist [REDACTED] at school/home. [REDACTED] opined that none of the scores obtained by [REDACTED] indicated that [REDACTED] met State eligibility criteria for special education and related services. The SAT decided to wait for the results from [REDACTED] [REDACTED] before RCB conducted its own evaluations. [REDACTED] testified that she went along with this decision because she thought this was how the process worked and she did not feel that she had much of a choice.

14. On [REDACTED] while corresponding with [REDACTED] Principal [REDACTED] stated "an IEP is typically necessary for a student to receive academic accommodations in class" and that could be discussed once M.C. obtained all the data from [REDACTED]. [REDACTED] responded stating that she believed that accommodations needed to be made for [REDACTED] "sooner rather than later in order for [REDACTED] to have any level of success."

15. [REDACTED] received additional language testing at [REDACTED] which concluded in [REDACTED]. [REDACTED] sent the test results to school personnel and requested a SAT meeting for late [REDACTED] early [REDACTED]. [REDACTED] also noted that the [REDACTED] was to be

done on [REDACTED] Principal [REDACTED] and [REDACTED] agreed to delay meeting to allow [REDACTED] to obtain the evaluation results.

16. The [REDACTED] testing in [REDACTED] was conducted by [REDACTED] M.S., CCC-SLP, who diagnosed [REDACTED] with [REDACTED] based on the Diagnostic and Statistical Manual (DSM-IV-TR). [REDACTED] did not base her diagnosis on the eligibility criteria of the IDEA. Among other tests performed, [REDACTED] performed the Clinical Evaluation of Language Fundamentals-IV. S.C.'s Expressive Language Composite Standard Score was 77 (6th percentile), Core Language Composite Standard Score was 79 (8th percentile), and Receptive Language Composite Standard Score was 85 (16th percentile).

17. [REDACTED] reviewed the testing done by [REDACTED] and informed Principal [REDACTED] that [REDACTED] assessments scores did not meet the qualifications for the first prong of eligibility for language impairment under IDEA and Tennessee State law and regulations.

18. On or about [REDACTED] one of [REDACTED] grade teachers, [REDACTED], who was [REDACTED] Language, Reading, and Social Studies teacher, sent home a progress report with failing grades on it which noted "Effort" under the Reading section, a notation that [REDACTED] had also included on a previous progress report under Social Studies. According to [REDACTED] [REDACTED] told [REDACTED] on [REDACTED] that [REDACTED] had not been making progress in RTI or completing her classroom assignments all year to that point. [REDACTED] did not testify at the hearing.

19. Dr. [REDACTED] Ph.D., conducted a neuropsychological evaluation of [REDACTED] in [REDACTED] but the results were not provided to [REDACTED] until [REDACTED] [REDACTED] forwarded the testing results to Principal [REDACTED] and [REDACTED] on [REDACTED] and again requested a SAT meeting.

20. On [REDACTED] [REDACTED] wrote a letter to Principal [REDACTED] asking for comprehensive educational testing to include "[REDACTED]" to determine if [REDACTED] had a learning disability.

21. The SAT met on [REDACTED] [REDACTED] and Dr. [REDACTED] evaluations were reviewed. [REDACTED] told [REDACTED] that the [REDACTED] testing did not qualify [REDACTED] for services. [REDACTED] was provided hard copies of a summary of [REDACTED] RTI assessment data and intervention levels for the [REDACTED] and [REDACTED] grade and graphs showing [REDACTED] progress with interventions. RCB requested and obtained [REDACTED] written consent for a comprehensive assessment to evaluate [REDACTED] for IDEA eligibility.

22. Within the next month, [REDACTED] conducted the Test of Language Development ("TOLD") and the Woodcock Johnson-III, Tests of Achievement ("WJ-III"). [REDACTED] evaluation included interviewing and observing, not just testing. [REDACTED] performed the TOLD and determined that "[b]ased on this testing alone, [REDACTED] does not qualify for speech therapy services." [REDACTED] stated in his WJ-III report that [REDACTED] "does not meet the Tennessee Department of Education's first criteria for a disability at this time."

23. On [REDACTED] RCB convened an IDEA/eligibility meeting to review and discuss [REDACTED] eligibility for special education and related services. Neither of the testing scores obtained by RCB met the Tennessee eligibility criteria for a "language impairment." Only one subtest score from the [REDACTED] testing met the State eligibility requirements, albeit by one point. It was determined that [REDACTED] did not meet the criteria for a disability consistent with Tennessee state regulations and was not eligible for special education services. [REDACTED] disagreed with the IEP team's eligibility determination. [REDACTED] shared with the team a list of [REDACTED] current needs and challenges and the team agreed that [REDACTED] was struggling in the listed areas, but that

█████ was still making progress in the areas via RTI Tier 3. RCB informed █████ that she had the right to request an independent educational evaluation, or "IEE."

24. █████ sent a letter on █████, to █████, Coordinator of Special Education for RCB, requesting an IEE because █████ felt the testing that RCB had performed was not comprehensive or appropriate, and that those test results were at odds with the testing done by █████. On █████, █████ by letter, responded to █████ request stating that █████ "request for an IEE applies only to testing that we performed," and included RCB's guidelines for obtaining an IEE. █████ did not find █████ response acceptable and did not independently set up an IEE.

25. As a part of the RTI program, RCB assessed █████ skills in reading and math three times during her █████ grade year through the Benchmark testing. In mathematics, Benchmark testing showed that █████ made significant progress (almost one year's growth) during her █████ grade school year. █████ overall math skills increased by more than a year as measured by her █████

26. █████ did not qualify for interventions based on her █████ grade fall reading Benchmark; however, RCB continued to provide her with Tier 2 and 3 interventions. During the █████ grade, █████ participated in several RTI interventions, including 95% Phonics, Fountas and Pinnell (reading), Moby Math, and Do the Math. █████ also participated in a comprehension group that used guided reading lessons. For any given week, █████ participated in Tier 2 reading interventions between 60-120 minutes (most frequently 120 minutes) and Tier 3 reading interventions (Reading Roost) for 30-120 minutes per week (most frequently 90 minutes). During her █████ grade school year, █████ received an average of three-and-a-half hours per week of direct intervention in reading, in addition to her regular classroom instruction in reading.

27. After the intervention data showed that [REDACTED] needed more intensive intervention in reading comprehension, her reading intervention was changed to target these needs. Math intervention included a combination of computation and word problems and focused on [REDACTED] deficit areas of subtraction and word problems. In addition to the RTI interventions in math and reading, RCB also provided [REDACTED] with classroom-based strategies and accommodations.

[REDACTED]

29. In [REDACTED], [REDACTED] began receiving private speech therapy with [REDACTED] speech language pathologist, at the [REDACTED]

30. [REDACTED] began her [REDACTED] grade school year at [REDACTED] in [REDACTED]

31. RCB initiated another IDEA/eligibility meeting on [REDACTED]. [REDACTED] attended with an advocate and the RCB team members present included: Principal [REDACTED] a special education teacher, two regular education teachers, [REDACTED], and a math intervention teacher. [REDACTED] expressed her opinions, asked questions and gave her input during the meeting. The IEP team told [REDACTED] that [REDACTED] was having problems with memory and processing. The team determined that [REDACTED] met the eligibility requirements for special education and related services under a primary disability of Language Impairment, that [REDACTED] met the criteria for a disability consistent with Tennessee state regulations and that her disability adversely impacted her educational performance in her learning environment. In reaching this decision, the IDEA eligibility team considered additional information that was not available until the fall of [REDACTED] (as well as prior testing/data), including teacher input and observations, [REDACTED] most recent TCAP

scores, and her Imagine Learning Placement Test and Aimsweb assessments. Additionally, [REDACTED] teachers provided information that suggested difficulties with a language impairment, such as [REDACTED] sister speaking for her in class.

32. RCB drafted a proposed Individualized Education Plan (IEP) for [REDACTED]. The proposed IEP offered speech language therapy (30 minutes per week in a pull-out setting and 30 minutes per week in an inclusion setting), offered one hour daily of direct academic services in the inclusion setting, and offered several accommodations for Reading, Language Arts, Writing, Math, Science, and Social Studies. [REDACTED] requested a specific accommodation that was added to the IEP.

33. [REDACTED] did not agree to the proposed IEP. She did not believe that the IEP adequately identified and addressed [REDACTED] academic gaps and was insufficient in the provision of language services. Also, [REDACTED] thought the goals specified in the IEP were inappropriate for [REDACTED] in light of her achievement level at that time. For instance, Goal 2 proposed [REDACTED] to define words in a [REDACTED] grade vocabulary bank; however, [REDACTED] was not operating at a [REDACTED] grade vocabulary level and sometimes struggled with [REDACTED] vocabulary. Further, Goal 4 required [REDACTED] to identify the correct operation to complete word problems with 100% accuracy. [REDACTED] also objected to the IEP on the basis that RCB had not done comprehensive testing on [REDACTED] as of the date of the [REDACTED] IEP meeting.

34. After the [REDACTED] IEP meeting, [REDACTED] contacted the [REDACTED] [REDACTED] to obtain further testing for [REDACTED] was administered a comprehensive Psychoeducational Evaluation by [REDACTED] Ph.D., of the [REDACTED] [REDACTED] in early [REDACTED] for which [REDACTED] paid \$ [REDACTED].

35. [REDACTED] remained at [REDACTED] without special education and related services until the end of the fall semester. On her last Comprehensive Progress Report before leaving [REDACTED] [REDACTED] received an A in both Reading and Language. However, these grades reflect a number of "participation" grades for which [REDACTED] always received 100% scores. Further, some test scores were generally low (from 10% at the lowest to 70% at the highest) and were not included in the calculation of the grades in [REDACTED] Progress Report.

36. [REDACTED] called an IEP meeting on [REDACTED] whereby she informed RCB that she was withdrawing [REDACTED] from [REDACTED]. Prior to withdrawing [REDACTED] from [REDACTED] [REDACTED] had sought to have [REDACTED] placed in [REDACTED] a private school, starting the Spring [REDACTED] semester. According to [REDACTED], [REDACTED] did placement testing on [REDACTED] and determined that she was performing more than [REDACTED] years behind her grade level. [REDACTED] would not accept [REDACTED] on grade level, and [REDACTED] only option there was to be retested for [REDACTED] grade.

37. In [REDACTED] [REDACTED] started homeschooling [REDACTED] and sending her to [REDACTED] for tutoring. [REDACTED] attended [REDACTED] from [REDACTED] through [REDACTED] in its tutorial program. [REDACTED] is enrolled in [REDACTED] "day program," attending this program for a half-day, Monday through Thursday of each week (16 hours a week), as well as being home-schooled by [REDACTED]. In the day program [REDACTED] participates in reading, language arts, handwriting, spelling, and math in both one-on-one and small group settings. [REDACTED] incorporates a number of the items in the recommendations section of Dr. [REDACTED] psychoeducational evaluation. [REDACTED] aligns her homeschooling with what [REDACTED] is doing in tutoring and works with [REDACTED] approximately 15 hours a week teaching, among other subjects, cursive writing, reading comprehension, social studies, and math.

38. [REDACTED] works with [REDACTED] as the home school umbrella and all students in the day program take a standardized test at the end of the school year. [REDACTED] is not licensed, approved, or monitored by the State of Tennessee. [REDACTED] does not have a licensed speech language pathologist on staff; all of the tutors at [REDACTED] are certified teachers with college degrees. [REDACTED] the founder of [REDACTED] testified that a number of her students have started in the day program after struggling in public schools and that certain of them were able to close their academic gaps while at the day program and go back to public school. Principal [REDACTED] testified that [REDACTED] is on a list of tutoring opportunities that he provides to parents and that [REDACTED] has had success with some students.

39. [REDACTED] testified that as of [REDACTED] [REDACTED] operated on a [REDACTED] grade level in math, from [REDACTED] in reading, and [REDACTED] grade in language arts. [REDACTED] intends to have [REDACTED] attend [REDACTED] year round until she is at grade level and then return to public school. [REDACTED] has spent \$[REDACTED] on tutoring for [REDACTED] through [REDACTED] (which includes both costs for the tutorial and the day program); the cost of the tutoring on an ongoing basis is \$[REDACTED] week.

40. [REDACTED] requested in both the [REDACTED] and [REDACTED] SAT meetings data regarding [REDACTED] progress in RTI but did not actually receive documents at that time. Information about [REDACTED] RTI data and interventions were explained to [REDACTED] at the [REDACTED] SAT meeting, [REDACTED] SAT meeting, and the [REDACTED] SAT meeting. [REDACTED] was consistent about inquiring of [REDACTED] teachers about [REDACTED] progress in RTI. [REDACTED] had multiple meetings and communications with teachers during [REDACTED] grade year regarding how [REDACTED] was doing in RTI. While certain teachers at [REDACTED] responded to these questions, [REDACTED] was less than responsive to [REDACTED] questions.

41. On [REDACTED] [REDACTED] emailed Principal [REDACTED] requesting RTI and other of [REDACTED] school documents. [REDACTED] was given documentation regarding [REDACTED] progress in RTI just prior to the [REDACTED] SAT meeting. [REDACTED] wrote another email on [REDACTED] to Principal [REDACTED] requesting "RTI Tier 3 information," discussed in the [REDACTED] SAT meeting, for [REDACTED] to provide to [REDACTED]. RCB provided [REDACTED] with seventeen pages of its RTI documentation dating back to [REDACTED] [REDACTED] grade year, which included RCB's personal, shorthand notes from its server. Some additional RTI documentation was provided to [REDACTED] in the discovery phase of this matter. During [REDACTED] grade school year, RCB sent [REDACTED] a letter explaining the interventions that [REDACTED] would be receiving for the first part of the [REDACTED] grade, and documentation of her progress with these interventions in reading and math.

[REDACTED]

Additionally, the State requires at least two measures under this first prong. [REDACTED] further testified that additional testing or informal data beyond the one score of 77 or below is needed to make sure that the student was not just having an "off day" or was uncomfortable with the examiner or setting. Thus, a clinical diagnosis of a language impairment under the DSM-5 does not equate to a "language impairment" under IDEA. [REDACTED]

█████ noted that approximately 1 in every 10-15 children seen by her have a clinical diagnosis of language impairment but do not meet the eligibility criteria for a language impairment under IDEA. Under the second prong, the student must also display an adverse impact due to the language impairment.

43. █████ testified that, prior to █████ there was no evidence that she was aware of in █████ education records of an adverse academic impact as a result of █████ language issues. █████ indicated it was a close call, but by the █████ eligibility meeting, the additional data in conjunction with prior assessment data met the eligibility criteria for a language impairment. Specifically, █████ drop in TCAP scores from █████ to █████ grade, particularly in reading/language arts, and the discrepancy between her █████ grade math calculation and math application Benchmark assessments suggested that a deficit in language skills that was also impacting her educational performance. █████ testified that unlike in the spring of █████, when the team had only one out of nine scores to suggest a disability, the team now had the supportive evidence required of a language impairment under the first prong.



45. [REDACTED] has observed [REDACTED] in therapy on multiple occasions, has reviewed her treatment plan, and has had several conversations with [REDACTED] regarding S.C. He believes that the therapy that [REDACTED] is doing with [REDACTED] including [REDACTED] treatment plan, is appropriate, but instead of one session, one hour a week, it is [REDACTED] opinion that [REDACTED] needs two sessions per week, one hour each session. [REDACTED] opined that [REDACTED] is rather far behind and that she is going to need a good amount of support for the foreseeable future.

46. [REDACTED] believes that [REDACTED] is language impaired based on the Tennessee state testing criteria for disability; he further noted that the second prong of the eligibility criteria (adverse educational impact) is to be determined by the IEP team. He is familiar with all of the language testing done by [REDACTED]. [REDACTED] opined that based on the CELF-4 testing administered by [REDACTED] in [REDACTED], [REDACTED] met the Tennessee testing criteria in the area of expressive language impairment because her scores on that test were lower than 1.5 standard deviations below average (standard score of 77 or below). [REDACTED] testified further that the OWLS testing that was administered by [REDACTED] in [REDACTED] indicates that [REDACTED] was still language impaired at that time. Even though the [REDACTED] testing done by [REDACTED] did not support the "cutoff score" for special education in Tennessee (the Tennessee testing criteria), [REDACTED] thinks this testing suggested that something was wrong with [REDACTED] language skills.

47. According to [REDACTED], [REDACTED] impairment is not minor and he feels it would be unusual for a child with a language impairment like [REDACTED] to be determined not to be language impaired just a few months after testing (like the OWLS, indicated she was language impaired). [REDACTED] opined that the decision as to whether a child is eligible for special

education services is a decision of the IEP team. He further noted that one could be diagnosed with a language impairment under the DSM and not be eligible for an IEP.

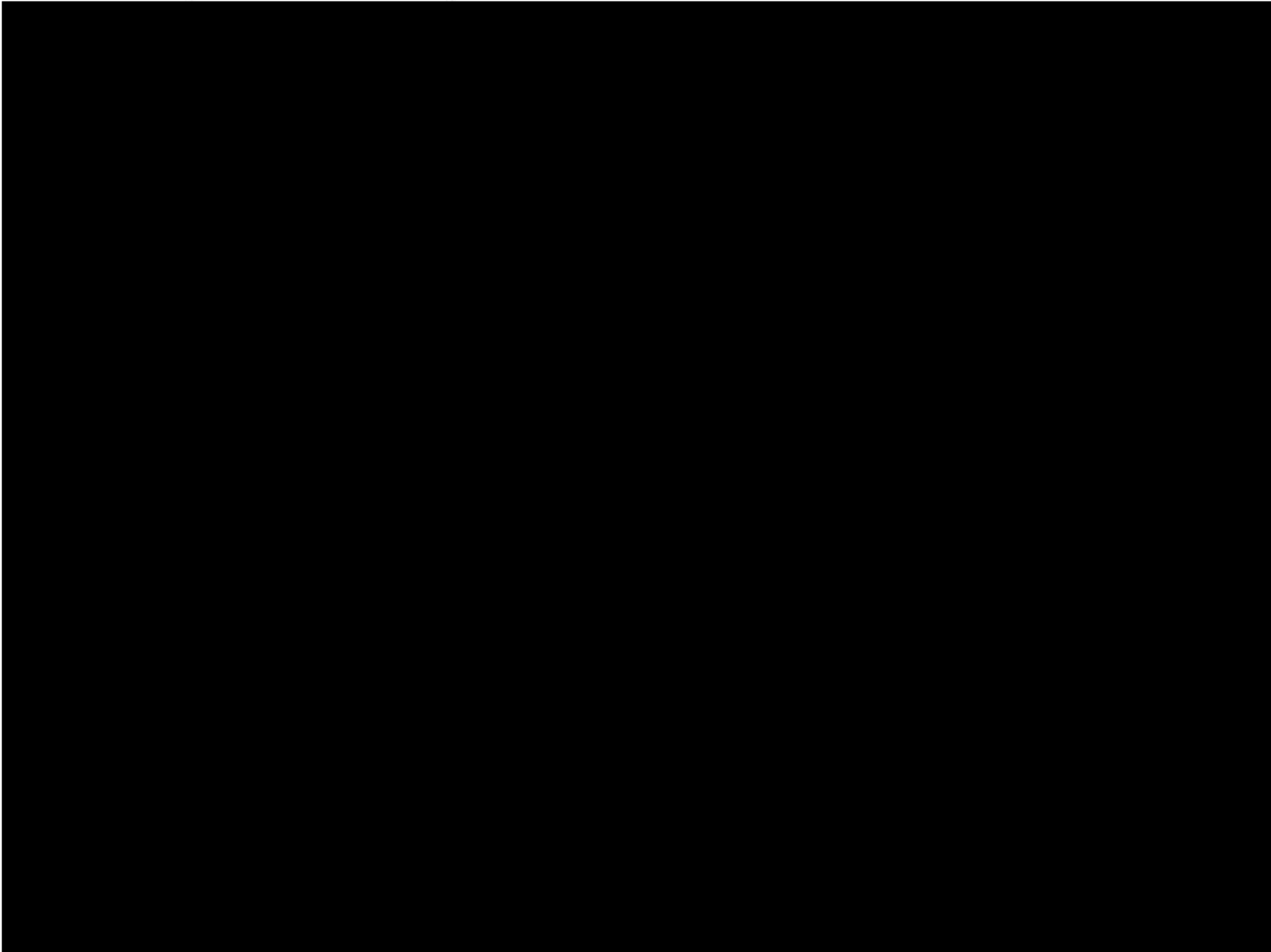
48. [REDACTED] is a licensed SLP and has been working at [REDACTED] since [REDACTED]. She also has experience working at a charter school in Metro Nashville Schools where she participates in IEP meetings and performs special education eligibility reevaluations. [REDACTED] had never attended an IEP meeting for any student prior to [REDACTED] and has never participated in an IDEA eligibility meeting.

49. [REDACTED] has provided [REDACTED] speech language therapy at [REDACTED] since [REDACTED] one time a week for an hour. She believes that the CELF-4 is a good test for identifying individuals that are language impaired. [REDACTED] opined that the [REDACTED] testing established that [REDACTED] was language disordered/impaired, and that [REDACTED] still exhibits a language impairment. [REDACTED] administered the OWLS testing ([REDACTED]) 5 months after [REDACTED] began therapy in order to develop a treatment plan for [REDACTED] and to get more information regarding [REDACTED] current abilities. The OWLS testing further confirmed to [REDACTED] that [REDACTED] was language impaired. [REDACTED] developed a treatment plan with [REDACTED] after administering the OWLS, using information from [REDACTED] [REDACTED] testing, her own experiences with [REDACTED] in therapy, as well as information from [REDACTED] regarding issues with which [REDACTED] was struggling in the classroom. [REDACTED] treatment plan included specific short and long-term receptive and expressive language goals.

50. After receiving [REDACTED] report, [REDACTED] and [REDACTED] discussed [REDACTED] testing and the RTI program. [REDACTED] also suggested that [REDACTED] consult with [REDACTED] regarding [REDACTED] needs. [REDACTED] testified that [REDACTED] has made progress in some of the short term goals that [REDACTED] set for her but has not mastered any of them. [REDACTED] believes that [REDACTED]

is functioning below grade level. [REDACTED] opined that in her experience children with language impairments do not have those impairments go away in four to five months.

51. [REDACTED] testified that she is familiar with the Tennessee testing criteria and special education eligibility criteria generally and believes that [REDACTED] qualifies as language impaired because of her test scores and [REDACTED] perception of the adverse educational impact that [REDACTED] has experienced. [REDACTED] has not communicated with [REDACTED] teachers or observed [REDACTED] at [REDACTED]. At the time [REDACTED] was deposed for this matter, she thought that the DSM-5 criteria correlated with IDEA eligibility standards.



educational records and spoke to approximately nine different school staff. Dr. [REDACTED] concluded that [REDACTED] was not language impaired.

58. Dr. [REDACTED] described RTI as a model that provides interventions prior to a referral for special education in an effort to alleviate or remediate a reading or math problem before identifying a student with a specific learning disability. She believes that the [REDACTED] RTI program was more intense than what the State of Tennessee eventually required school districts to implement for RTI. Dr. [REDACTED] opined that [REDACTED] was making progress through the RTI interventions and the RTI documents do not reflect a basis for [REDACTED] to have been referred for IDEA determination for a suspected learning disability in reading and math. Dr. [REDACTED] testified that the level of intervention [REDACTED] received via the RTI program during her [REDACTED] grade year was probably as intense or more intense than any services [REDACTED] would have received in special education and that RCB did not use RTI to delay or deny special education services to [REDACTED]

59. Dr. [REDACTED] opined that the fact that a student is making good progress in reading and math due to RTI interventions does not always mean that such progress will translate to the student's grades. She believes that a school district would not be in violation of the Child Find provision of the IDEA when deciding not to evaluate a child diagnosed with a clinical language impairment if the child was making progress with interventions. Dr. [REDACTED] feels that [REDACTED] was making progress in the RTI program from the [REDACTED] grade through the [REDACTED] grade. Although it is not clear to Dr. [REDACTED] why [REDACTED] began to obtain lower grades starting at the end of her [REDACTED] grade year, Dr. [REDACTED] testified that [REDACTED] poor grades could be attributed to other factors that occurred around this point in time, namely being diagnosed with a language impairment. She noted that in her expert experience, it is not uncommon for a child to give up after being "told there's something wrong with them."

60. According to Dr. [REDACTED] if the scores used by [REDACTED] to diagnose a language impairment were applied to the Tennessee standards for eligibility, [REDACTED] would not have been called language impaired. She testified that most of [REDACTED] non-academic testing has been uneven. Dr. [REDACTED] opined that low classroom performance is not necessarily indicative of a disability and students who score "below proficient" on the TCAP do not necessarily have a disability. In general, approximately 50% of students in the state of Tennessee fall below proficient on the TCAP.

61. The decision in [REDACTED] by the IEP team that [REDACTED] was language impaired and eligible for services was deemed to be a good decision by Dr. [REDACTED] because of the new information (that was not available to the team in [REDACTED]) that was reviewed. Dr. [REDACTED] was of the opinion that the proposed IEP offered in [REDACTED] was excellent in terms of addressing [REDACTED]'s needs; she found the goals, accommodations, and services appropriate for [REDACTED]. Dr. [REDACTED] does not think that [REDACTED] is providing any services/instruction to address a language impairment and are working on [REDACTED] academic skills.

CONCLUSIONS OF LAW

1. Petitioners in this case have the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in Petitioners' favor. Rule 1360-4-1-.02, Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies; Schaffer v. Weast, 546 U.S. 49 (2005).

2. Petitioners allege in their Amended Due Process Complaint that RCB failed to offer or provide Extended School Year services. However, no proof was presented on this issue. Therefore, Petitioners have failed to carry the burden of proof by a preponderance of the evidence regarding Extended School Year services

Child Find

3. The Individuals with Disabilities Education Act (IDEA) requires RCB to provide a “free appropriate public education” (FAPE) in the least restrictive environment to all students with disabilities who are in need of special education and related services. Under IDEA’s “child find” provisions, school districts have an obligation to identify, locate, and evaluate all children with disabilities. 34 C.F.R. § 300.111. If a school district fails to satisfy its child find duty or fails to offer a disabled student an appropriate IEP, and if that failure affects the student’s education, then the district has necessarily denied the student a FAPE. Boose v. District of Columbia, 786 F.3d 1054, 1056 (D.C. Cir. 2015).

4. To prove that a delayed evaluation for a student was a procedural violation of IDEA’s child find, a petitioner “must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” Bd. of Educ. of Fayette County, Ky. v. L.M., 478 F.3d 307 (6th Cir. 2007). The law does not require that schools evaluate and identify as disabled every student that is having academic difficulties. D.K. v. Abington Sch. Dist., 696 F.3d 233 (3d Cir. 2012). The mere fact that a school district decides not to evaluate a student is not a child find violation. E.g., A.P. v. Woodstock Bd. of Educ., 572 F. Supp. 2d 221, 225 (D. Conn. 2008), *aff’d*, 370 Fed. Appx. 202 (2nd Cir. 2010).

5. The Sixth Circuit Court of Appeals has found that a school district did not overlook clear signs of a disability when a student was moderately successful with interventions over approximately a two-year period. Bd. of Educ. of Fayette County, Ky. v. L.M., 478 F.3d at 307. Furthermore, when there are no clear signs of a disability due to success with RTI

interventions, a district does not violate IDEA's child find mandate. See Demarcus v. Bd. of Educ., 2014 U.S. Dist. LEXIS 30932, *15-18 (N.D. Ill. Mar. 11, 2014).

6. Petitioners argue that RCB violated child find by ignoring testing that Petitioners believe showed a language impairment, by ignoring an alleged adverse educational impact resulting from the language impairment, and by delaying and improperly performing an educational evaluation.

7. [REDACTED] testified that she requested testing for [REDACTED] at the suggestion of [REDACTED] [REDACTED] grade teacher in [REDACTED]. As a result, at a SAT meeting in [REDACTED] it was discussed that [REDACTED] was making progress in RTI, testing was not needed and her progress would be monitored. [REDACTED] continued to receive RTI for the remainder of the [REDACTED] grade in math and reading, including small group in the classroom and smaller group pull-out. Her scores showed she could independently do the majority of the reading work assigned during a session and she was in the near average range of students in math. She received C's in language, math, and reading on her final grades. [REDACTED] TCAP scores were on the low end of the "Basic" range in Reading/Language Arts and Math. Her TCAP scores in Science and Social Studies were "Below Basic" and "Below Proficient," respectively. At the end of [REDACTED] [REDACTED] grade year, about 50 percent of the students attending [REDACTED] scored below proficiency levels in reading, which is slightly above average for the State of Tennessee. The RTI data, grades, and TCAP scores all indicate that RCB did not overlook clear signs of disability, [REDACTED] was not in need of specialized instruction and that there was no reason to evaluate. There was no child find violation during the [REDACTED] grade.

[REDACTED]

evaluation at [REDACTED] and asked whether the school preferred to wait to test [REDACTED] until the [REDACTED] testing was completed. Principal [REDACTED] responded that RCB would prefer to wait and asked if [REDACTED] agreed with that decision. [REDACTED] responded that it was "perfectly acceptable" to wait to test [REDACTED] until the [REDACTED] assessments were completed. After receiving the initial private evaluation results ([REDACTED] testing) and informing RCB that [REDACTED] was scheduled for additional testing, [REDACTED] again agreed with the SAT ([REDACTED]) to wait to evaluate [REDACTED] until RCB received all the testing results. At the meeting, [REDACTED] opined that none of the scores obtained by [REDACTED] indicated that [REDACTED] would meet State eligibility criteria for special education and related services. Language testing was concluded in [REDACTED] ([REDACTED]) and Principal [REDACTED] and [REDACTED] agreed to delay meeting to allow [REDACTED] to obtain the neuro psychological evaluation results. Once all the results were received in [REDACTED] RCB scheduled a SAT meeting with [REDACTED] to discuss [REDACTED] private evaluation results and obtain consent for an evaluation. On [REDACTED] [REDACTED] wrote a letter to Principal [REDACTED] asking for comprehensive educational testing. The SAT met on [REDACTED] and RCB obtained [REDACTED] written consent for a comprehensive assessment which was conducted within the month. The proof demonstrated that [REDACTED] agreed to wait on private assessment results from [REDACTED] until [REDACTED]. It was not unreasonable for RCB to wait until the private evaluations were completed before 1) doing its own testing or 2) making an eligibility decision. The evidence does not show that RCB delayed testing/evaluating [REDACTED] or that there was any child find violation regarding the request for testing/evaluating.

9. All of [REDACTED] private testing was reviewed and considered by RCB, as well as, discussed at the SAT meetings and the [REDACTED] and [REDACTED] eligibility meetings. None of [REDACTED] private evaluations caused RCB to suspect a disability. [REDACTED] and [REDACTED]

pursuant to the DSM is not the same as the criteria for determining whether a student has a language impairment under IDEA. As of [REDACTED] private and school testing had resulted in conflicting results. The [REDACTED] and school tests did not meet the Tennessee eligibility criteria for language impairment and only one subtest of the [REDACTED] testing met the State eligibility (by one point). In terms of an adverse educational impact, the parties disagree as to whether such existed in [REDACTED] or earlier (grades, TCAP scores, RTI progress).

14. The change in RCB's position in [REDACTED] is attributed to several pieces of information not available in [REDACTED]. First, [REDACTED] experienced a decline in TCAP scores from [REDACTED] to [REDACTED] grade (a drop from "basic" to "below basic" in Reading/Language Arts and Math). Second, the [REDACTED] test indicated a deficit regarding math word problems compared to her math computation ability (not present in [REDACTED] testing). Third, the Imagine Learning test showed an oral vocabulary and grammar weakness. Additionally, [REDACTED] teachers provided information that suggested difficulties with a language impairment, such as [REDACTED] sister speaking for her. Petitioners contend that although [REDACTED] TCAP achievement level for Math and Reading/Language Arts changed from "basic" to "below basic," her actual scores did not fall significantly in each subject. It is further argued by Petitioners that teacher observations prior to [REDACTED] established an adverse educational impact.

15. Whether or not [REDACTED] had a language disorder qualifying her for services under the IDEA in [REDACTED] or earlier is not unequivocal or easily ascertainable. Since [REDACTED] clearly had educational challenges and skill deficits, an argument can be made for the proposition that she was eligible in [REDACTED] but, based on all of the proof, it is determined that she was not eligible. Professionals disagreed and testing/assessments showed conflicting results. Grades and TCAP scores are a factor to be considered but are not determinative. As discussed above, there

was progress in interventions and RTI. The IEP team appropriately decided that [REDACTED] did not meet eligibility guidelines for special education services in [REDACTED]. Further, there were significant enough changes/new information, enumerated above, between [REDACTED] and [REDACTED] to warrant the IEP team's decision that [REDACTED] did meet eligibility guidelines for special education services in [REDACTED]. As a corollary, the changes/new information between [REDACTED] and [REDACTED] were not inconsequential or immaterial such that RCB should have made the [REDACTED] decision in [REDACTED].

The [REDACTED] Proposed IEP

16. The IDEA and Tennessee law require RCB to provide a FAPE to [REDACTED] by developing an Individualized Education Program (IEP) that is both procedurally and substantively compliant. See Bd. of Educ. of the Hendrick Hudson School Dist. v. Rowley, 458 U.S. 176 (1982). The Rowley court developed a two-prong test for determining the appropriateness of a proposed IEP. First, the IEP must be substantively appropriate by offering goals and objectives that are "reasonably calculated to provide educational benefit" to the child. Id. Second, the procedural safeguards of the Act must be provided to the parents, including the right to participate in the development of the IEP and to receive notification and explanation of their rights. Id.

17. An IEP shall include, among other things, (1) a statement of the child's present levels of educational performance (2) a statement of measurable annual goals (3) a statement of the special education and related services and supplementary aids and services to be provided to the child that, to the extent practicable, are based on peer-reviewed research (4) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the nonacademic and extracurricular activities and (5) a statement of how the child's

progress toward the annual goals will be measured. 20 U.S.C. §1414(d)(1)(A). Although minor technical violations of these requirements may be excused, there must be appropriate objective criteria for measuring progress. Cleveland Heights-University Heights City School District. v. Boss, 144 F.3d 391 (6th Cir. 1998).

18. FAPE must be “tailored to the unique needs of the handicapped child by means of an IEP. Rowley, 458 U.S. at 205. The educational benefit must be beneficial and that benefit must be gauged in relation to a an individual child’s capabilities and potentialities. Deal v. Hamilton County Board of Education, 392 F.3d 840 (6th Cir. 2004). An IEP goal has been said to be well-written if it can pass the “stranger test,” meaning that a person unfamiliar with the goal would “be able to implement the goal, be able to assess the student's progress on the goal, and be able to determine whether the student's progress was satisfactory.” Mason City Community Sch. Dist., 46 IDELR 148 (SEA IA 2006). Annual IEP goals should reflect what a student is reasonably capable of performing in a twelve month period, not where the student is on the day the IEP is implemented. See Encinitas Unified Sch. Dist., 56 IDELR 147 (SEA CA 2011). The IDEA does not compel school districts to provide special education and related services that are preferred by a child’s parent. Tucker v. Calloway County Board of Educ., 136 F.3d 495, 505 (6th Cir. 1998).

19. [REDACTED] IEP proposed speech language therapy one time per week for 30 minutes in a pull-out setting, as well as, an additional one time per week for 30 minutes in an inclusion setting. The IEP also offered one hour daily of direct academic services in the inclusion setting. Numerous classroom accommodations were also offered (with input from [REDACTED] teachers) to address the impact of [REDACTED] language impairment on her academics. Three distinct language

goals are specified and described in addition to one goal related to academics-math problem solving.

20. [REDACTED] objected to the proposed IEP. She does not believe that the IEP adequately identified and addressed [REDACTED] academic gaps, that the goals were inappropriate and vague, and the provision of language services was insufficient. Petitioners further argue the IEP has shortcoming by contrasting the IEP to the treatment plan of [REDACTED] which includes both short and long-term goals; Petitioner also criticizes RCB for not consulting [REDACTED] or her plan regarding the proposed IEP.

21. Dr. [REDACTED] suggested that the inclusion aspect of the IEP was of benefit to the teacher and [REDACTED]. Many of the IEP accommodations were consistent with the recommendations proposed by Dr. [REDACTED]. [REDACTED] opined that [REDACTED] needed to receive language therapy within the curricular setting and needed accommodations to address her needs in the classroom, both found in the IEP. Principal [REDACTED] noted that [REDACTED] IEP goals were individualized based on [REDACTED] present levels of performance obtained through her assessments and evaluations. It is determined that the goals are not vague, general, or set too high for [REDACTED] but are reasonable and can be objectively measured to determine progress. The proof demonstrated that the proposed services, accommodations, and goals reflect a consideration of [REDACTED] individual capability/potential and are appropriate for [REDACTED]. The proposed IEP was reasonably calculated to provide [REDACTED] an educational benefit. The first prong of the Rowley test was met.

22. [REDACTED] was provided a copy of her procedural safeguards and a prior written notice indicating the district's proposal to determine eligibility for [REDACTED] and develop an IEP. [REDACTED] attended the IEP meeting on [REDACTED] with an advocate to assist her and expressed her opinions, as well as, gave input during the meeting. Petitioners take issue with the fact that a

draft of the IEP was prepared prior to the [REDACTED] meeting; however such action does equate to predetermination and a denial of meaningful participation. Petitioners also question why neither the school psychologist, [REDACTED] nor the private evaluators served as members of [REDACTED] IEP team. The IDEA requires that each IEP team meeting include at a minimum the following individuals: (1) the parent of the child, (2) a regular education teacher, (3) a special education teacher, (4) a district representative, and (5) "an individual who can interpret the instructional implication of evaluation results," who may be the same as an individual in (1)-(4). 34 C.F.R. 300.321(a). In addition to these required team members, either the parent or the school can include "individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." 34 C.F.R. 300.321(a)(6). The IEP team included the proper school personnel. The RCB team members, including the speech pathologist and several of [REDACTED] teachers, were well qualified to address the areas of need for a student with a language impairment. [REDACTED] tutors and evaluators were allowable but not required team members and RCB had no obligation to include [REDACTED] private practitioners when developing the IEP. It is determined that [REDACTED] was provided an opportunity for meaningful participation in the development of [REDACTED] proposed IEP. The second prong of the Rowley test was met.

Providing RTI Documents

23. A school district must comply both procedurally and substantively with the IDEA. N.B. v. Hellgate Elementary Sch. Dist., 541 F.3d 1202, 1207 (9th Cir 2008). The inquiry of the courts regarding the provision of FAPE is twofold: 1) has the State complied with the procedures set forth in the Act? and, 2) is the IEP developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits. Rowley, 458 U.S. at 206-207. With regard to procedural matters, a court should "strictly review an IEP for procedural

compliance,” although technical deviations will not render an IEP invalid. Deal v. Hamilton County Board of Education, 392 F.3d 840, 853 (6th Cir. 2004) *citing* Dong ex rel. Dong v. Bd. of Educ. of the Rochester Cmty. Sch., 197 F.3d 793, 800 (6th Cir. 1999).

24. A finding of procedural violations does not necessarily entitle Petitioners to relief. Id. The procedural violation must cause substantive harm, and thus constitute a denial of FAPE, for relief to be granted. Id., Metropolitan Bd. of Pub. Educ. V. Guest, 193 F. 3d 457, 464-465 (6th Cir. 1999). A court need not reach the question of substantive compliance if the court finds procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents’ opportunity to participate in the IEP formulation process, or that caused a deprivation of educational benefits. M.M. v. Lafayette School Dist., 767 F.3d 842, 852 (9th Cir. 2014 *citing* N.B., 541 F.3d at 1207. In M.M., the Court held that the district violated the IDEA by “failing to ensure that the RTI data was documented and carefully considered by the entire IEP team and failing to furnish the parents with the data, thereby making the parents unable to give informed consent for both the initial evaluation and the special education services [REDACTED] received.” Id. at 853.

25. The IDEA provides the parent of a child with a disability the opportunity to examine all records and participate in all meetings related to the identification, evaluation and educational placement of the child and provision of FAPE to the child. 34 C.F.R. 300.501(a)-(b). However, the IDEA does not address a school district’s obligation to provide parents with general education records or invite parents to general education meetings prior to initiation of the special education process. The court in A.P. v. Woodstock Bd. of Educ. rejected a parent’s argument that “any ‘meeting’ regarding a child who is having difficulties triggered the

procedural protections of the IDEA.” A.P. v. Woodstock Bd. of Educ., 572 F.Supp. 2d 221, 229 (D. Conn. 2008).

26. Petitioners argue that RCB did not provide [REDACTED] with RTI documentation; as a result, [REDACTED] was prevented from advocating for [REDACTED] and meaningful participation, which constitute a denial of FAPE under M.M. v. Lafayette School Dist. RCB counters that pursuant to A.P. v. Woodstock Bd. of Educ. it is questionable as to whether it had to provide RTI documentation, that it did in fact provide or explain the RTI materials, and if there were any violations such violations were merely procedural and did not rise to the level of substantive harm.

27. Although it may be difficult to establish a bright line date when initiation of the special education process occurred in this case thus allowing [REDACTED] the opportunity to examine all records and participate in all meetings related to the identification, evaluation, and educational placement, it seems apparent that such a point did arise during the ongoing discussions between [REDACTED] and RCB as to whether or not [REDACTED] should receive services under the IDEA. Therefore, RCB cannot simply argue that [REDACTED] is the starting point for compliance with 34 C.F.R. 300.501(a)-(b).

28. Information about [REDACTED] RTI data and interventions was explained to [REDACTED] at the [REDACTED] SAT meeting, [REDACTED] SAT meeting, and the [REDACTED] SAT meeting. Additionally, [REDACTED] had multiple meetings and communications with teachers during [REDACTED] grade year regarding how [REDACTED] was doing in RTI. [REDACTED] understood that interventions were being provided and how [REDACTED] was responding to RTI although she believes “data behind the data” was not provided. [REDACTED] also received hard copies of a summary of [REDACTED] RTI assessment data and intervention levels for the [REDACTED] and [REDACTED] grade and graphs showing

██████ progress with interventions at the ██████ SAT meeting. During ██████ grade school year, RCB sent ██████ a letter explaining the interventions that ██████ would be receiving for the first part of the ██████ grade, and documentation of her progress with these interventions in reading and math.

29. This matter is distinguishable from M.M. v. Lafayette School Dist. In that case the IEP team violated a provision in IDEA which requires specific RTI documentation be used for determining eligibility for a student with a specific learning disability (██████ eligibility determination was not for a specific learning disability). Also, that procedural violation caused substantive harm because the student was determined eligible based on data that conflicted with the student's RTI data and the parent was unaware of the student's unique deficits and conflicting scores in the data, while other team members knew such information, causing the parent to be unable to properly advocate for the student. Further, ██████ IEP was developed based on her language needs, not her lack of progress with RTI interventions, and any general education data not provided to ██████ was not used for eligibility or IEP programming.

30. RCB may not have provided ██████ with every single school work document of ██████ general education interventions and the response to a request may not have been immediate; however, any procedural violation in this regard did not result in substantive harm. ██████ was not precluded from being able to advocate for ██████ there was no loss of educational opportunity or deprivation of educational benefit, and ██████ was able to meaningfully participate.

RCB Evaluation/Testing

31. The scope of what must be included in a comprehensive evaluation is described as follows by the Ninth Circuit:

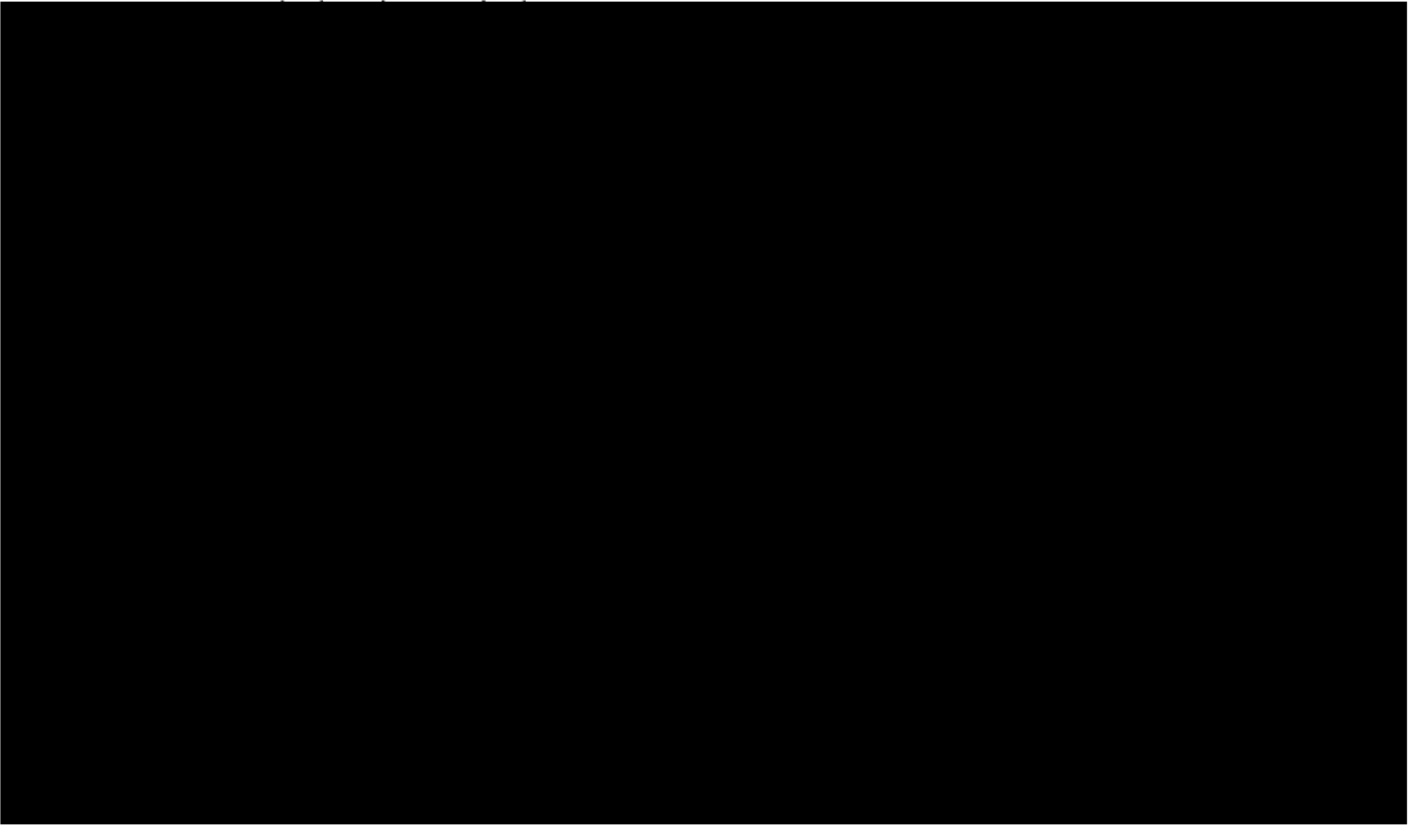
In conducting the initial evaluation, the school district must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and

academic information” to determine both whether the child is a child with a disability and the content of the child’s IEP.

The agency “shall not use any single measure or assessment as the sole criterion” for determining eligibility.

M.M. v. Lafayette School Dist., 767 F.3d at 852. Under 34 C.F.R. §300.305(a), the IDEA sets forth the following provisions to address existing evaluation data and additional data needed for an evaluation:

As part of an initial evaluation (if appropriate)...., the IEP Team and other qualified professionals, as appropriate, must (1) Review existing evaluation data on the child including (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine (i) Whether the child is a child with a disability...and the educational needs of the child...; (ii) The present levels of academic achievement and related developmental needs of the child; (iii) Whether the child needs special education and related services...; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the



also included interviewing and observing, as well as consideration of the assessments completed by [REDACTED].

33. The IDEA does not require a certain number of assessments be completed. RCB had an abundance of data available to address [REDACTED] language and academic needs which included [REDACTED] private evaluations, general education data, and standardized assessments completed by RCB. Petitioners' allegation that RCB failed to fully evaluate [REDACTED] is without merit.

It is **Determined** that Respondent is in compliance with IDEA procedures, has not committed any procedural or substantive violations of IDEA, and Respondent did not fail to timely evaluate or fail to identify [REDACTED] as a student with a disability under IDEA. It is **ORDERED** that the remedies and relief sought by Petitioners are **denied**. Respondent is the prevailing party in this matter.

Entered this the 9th day of December, 2015.



LEONARD POGUE
ADMINISTRATIVE JUDGE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 9th day of December, 2015.



Richard C. Collier, Director
Administrative Procedures Division

Notice

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.