

<b>STATE OF COLORADO</b> <b>OFFICE OF ADMINISTRATIVE COURTS</b> 1525 Sherman Street, 4 <sup>th</sup> Floor, Denver, Colorado 80203	<p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p>
<b>MESA COUNTY VALLEY SCHOOL DISTRICT 51,</b> Petitioner,  vs.  <b>[FATHER] and [MOTHER], parents of [STUDENT], a</b> <b>minor,</b> Respondents.	
<b>DECISION</b>	

Petitioner (District 51) filed this due process complaint seeking to override Respondents’ refusal to consent to requested evaluations of their daughter, [Student]. This proceeding is subject to the provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq.*, as implemented by federal regulation 34 CFR §§ 300.500 to 300.515, and state regulation 1 CCR 301-8, § 2220-R-6.02. Hearing was held April 16, 2018, before Administrative Law Judge (ALJ) Robert Spencer at the Office of Administrative Courts Regional Office, 222 S. 6<sup>th</sup> St., Suite 414, Grand Junction, Colorado. [Attorney for the District], Esq., Hoskin Farina & Kampf, represented District 51. Respondents appeared on their own behalf without representation by counsel.

### Case Summary

[Student] is an [age] year-old girl diagnosed with bilateral optic nerve hypoplasia that significantly impairs her vision. She has been receiving special education services from District 51 through an Individualized Education Program (IEP) based upon a primary disability of “orthopedic impairment” and a secondary disability of visual impairment.<sup>1</sup> [Student]’s IEP team initially designated orthopedic impairment as her primary disability due to concerns that impairments in her fine and gross motor skills, impaired sense of touch, and need for AFOs (ankle/foot orthotics) were the primary impediment to her learning. However, Respondents believe that the primary impediment is [Student]’s visual impairment and that District 51 is not providing sufficient services appropriate to that disability. Therefore, in August 2017, they asked for an IEP team meeting to address those concerns and substantially revise the IEP.

In response, District 51 IEP team members met with Respondents to determine what additional assessments, if any, would be needed before the formal IEP meeting could be held. This process, known as “review of existing data” or RED, was also intended to

---

<sup>1</sup> The term “orthopedic impairment” is defined by state regulation at 1 CCR 301-8, Rule 2.08(6).

serve District 51's obligation to conduct a triennial evaluation to determine [Student]'s continuing eligibility for special education and the services she needs to address her disabilities. Although the RED meetings were attended by Respondents and other IEP team members, they were not formal IEP team meetings. That is to say, the purpose of the RED meetings was to review existing data to see what additional evaluations might be necessary to properly assess [Student]'s educational needs. Once that data was in hand, a formal IEP team meeting would be scheduled to prepare a new IEP appropriate to meet those needs.

As a consequence of the RED meetings, the IEP team concluded that although [Student] has significant visual impairment that requires special education services, she also has some cognitive and emotional issues that interfere with her learning. Therefore, the District 51 team provided Respondents with a Prior Written Notice (PWN) asking for their consent for not only a vision assessment, but also assessments of her cognitive, academic, and social-emotional behaviors. Although Respondents did not object to an appropriate vision assessment, they consistently refused consent for the other assessments.

On February 7, 2018, District 51 filed a complaint seeking to override Respondents' refusal to consent to the additional evaluations. District 51 argues that the evaluations are essential to understand the full scope of [Student]'s disabilities so that it can provide the educational services appropriate to meet her needs. Respondents, on the other hand, believe that the primary if not only disability impacting [Student]'s learning is her visual impairment and that additional assessments are not necessary. Furthermore, they believe District 51 is not providing the services [Student] needs to address her visual impairment.

For reasons explained below, the ALJ grants District 51's request to override Respondents' refusal to consent to the requested evaluations.

### **Preliminary Issue**

On the last workday prior to the hearing, Respondents filed a Motion to Dismiss District 51's complaint on the ground that they independently obtained comprehensive evaluations sufficient to satisfy District 51's needs. The ALJ addressed the motion at the outset of the hearing.

District 51 did not agree that the evaluations are sufficient, and opposed the motion to dismiss. Because Respondents' motion, though styled a motion to dismiss, is in the nature of a motion for summary judgment, it may be granted only if it resolves all genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See *generally* C.R.C.P. 56(c). Because there is a genuine factual dispute as to whether the evaluations are sufficient to allow the IEP team to understand and address [Student]'s educational needs, the motion was denied. The evaluations, however, were admitted as evidence to be considered by the ALJ.

## Findings of Fact

### *[Student] and the Current IEP*

1. [Student] is an [age] year-old girl (d.o.b. [Date of Birth]) with bilateral optic nerve hypoplasia causing severe visual impairment. She also has a history of seizures thought to be related to idiopathic epilepsy. Ex. A.

2. Presently, [Student] can count fingers at a distance of two feet. She can read printed materials but prefers 36-point type or larger, as exemplified below:

# 36-Point Type

3. [Student]'s impaired vision interferes with her ability to learn. Her need for special education services was identified at an early age, and she has received services under an IEP for several years. Her most current IEP is dated May 9, 2017. Ex. 22.

4. The May 9, 2017 IEP identified [Student]'s visual impairment as a secondary disability. It identified her primary disability as an orthopedic impairment due to deficits in her fine and gross motor skills, impaired sense of touch, and need for AFOs. Respondents did not agree with the IEP, did not sign it, and in fact walked out of the IEP team meeting.

5. Presently, [Student] is in 5th grade at [Elementary School]. Pursuant to her IEP, she is educated in the general education (gen-ed) classroom approximately 60 percent of the time with 1:1 support from a paraprofessional. She receives small group specialized instruction in literacy and mathematics from a certified special education teacher outside the gen-ed classroom. [Student] also receives support services from a speech-language pathologist, occupational therapist, adaptive physical education teacher, and a teacher for the visually impaired (TVI). In addition to academic assistance, her para provides 1:1 personal assistance with eating, toileting, mobility, and safety.

6. [Student]'s IEP is accompanied by a Learning Media Plan that designates print enlargement and optical enhancement as her primary learning mode. Ex. 1. Optical enhancement is provided by use of magnification software and a portable VisioBook system that provides distance and near magnification.<sup>2</sup> She has access to audiobooks and, when appropriate, written materials are read to her. She is allowed extended time to perform tasks. She had been introduced to Braille, but as of the date of the IEP she was unable to demonstrate the tactual skills that are the precursors to Braille reading.

7. According to the IEP, [Student] has received instruction in use of a white cane for mobility, but if given the choice, she prefers to rely on her vision and not use the cane. Ex. 22, p. 115.

8. [Student]'s current IEP is due for annual review on or before May 8, 2018.

---

<sup>2</sup> VisioBook is the tradename of a portable device that uses CCTV technology to magnify images that are then displayed on a computer screen. See <http://www.baumuk.com/products/visiobook.html>.

### *RED Meetings and Request for Additional Assessments*

9. Respondents have been concerned for some time that District 51 does not fully appreciate the severity of [Student]'s visual impairment and is not providing sufficient educational services appropriate to that impairment. Their concerns include the fact that [Student]'s current IEP does not identify visual impairment as her primary disability, that she is not receiving adequate instruction in Braille and use of a white cane, and that her TVI service should be greatly increased beyond what is provided by her current IEP.

10. Due to these and other concerns, Respondents made a written request on August 24, 2017 for an IEP meeting to prepare a new, more appropriate, IEP. Ex. 2.

11. In response, District 51 offered, and Respondents agreed, to participate in a RED meeting to review existing data and determine what additional assessments, if any, were necessary to assist the IEP team to understand [Student]'s disabilities and educational needs. These meetings were held on September 21 and October 16, 2017. Ex. 31, 32.

12. Based upon observations of [Student]'s academic performance, IEP team members were concerned that she has issues interfering with her ability to learn beyond her impaired vision and the physical impairments previously identified. Specifically, the team believed [Student] might have cognitive and behavioral issues that were also affecting her ability to learn. The team therefore decided that additional assessments were necessary, including assessments of [Student]'s cognition and behavior.

13. At the hearing, several District 51 witnesses explained the reason for this decision. Specifically:

- [TVI Teacher One] is a TVI with a certification in orientation and mobility. She instructs visually impaired children in use of low vision devices, computer skills, Braille, use of the white cane, and travel skills. She worked directly with [Student] from the time she entered preschool until the beginning of the current school year. Now, she supervises the service provided by a new teacher, [TVI Teacher Two]. According to [TVI Teacher One], [Student] is not performing at grade-level but the issue is not limited to her impaired vision.<sup>3</sup> Specifically, [Student] has "lots of behaviors" that interfere with her learning. For example, [Student] requires repeated prompting to do tasks that she should be able to do without prompting. It also takes much prompting to get her to repeat back information that she has or should have learned. She can learn "pockets of information" applicable to one setting, but has difficulty transferring that knowledge to a different setting. [Student] has made some progress in learning Braille, but her progress is slow and inconsistent. She is resistant to learning Braille and has difficulty with tactual discrimination. She sometimes engages in tantrums and refuses to do her work. Based upon her considerable experience teaching blind students, [TVI Teacher One] believes

---

3 [Student] scored in the 3<sup>rd</sup> percentile in mathematics and 1<sup>st</sup> percentile in literacy on the 4<sup>th</sup> grade state CMAS assessments. Ex. 15, 16. Although accommodations are available for disabled children taking the CMAS tests, the record does not reveal what accommodations [Student] received. Respondents opted out of the 3<sup>rd</sup> and 5<sup>th</sup> grade testing.

[Student]'s behaviors are not only inconsistent with what is expected of 5<sup>th</sup> grade students, but also inconsistent with what blind students can be expected to accomplish. [TVI Teacher One] believes that cognitive and behavioral assessments will be very helpful to understand everything that adversely affects [Student]'s learning.

- [TVI Teacher Two] is [Student]'s current TVI. Because [TVI Teacher Two] does not yet have an orientation and mobility certification, she is supervised by [TVI Teacher One]. [TVI Teacher Two] has been assisting [Student] to learn Braille, typing skills, and mobility. [Student] struggles with learning basic skills, such as the process of inserting and removing paper from the Braille.<sup>4</sup> She is able to comprehend the process, but is inconsistent in follow-through and needs repeated prompting to do tasks she has already learned. Similarly, she struggles with the finger movements necessary to read Braille. Her progress has not been consistent with other visually impaired children her age. She also exhibits behavioral problems, in that she is easily frustrated and perseverates on her mistakes. In [TVI Teacher Two]'s opinion, these problems are not due solely to [Student]'s visual impairment, but are likely due to some form of cognitive or behavioral issue. [TVI Teacher Two] believes additional assessments would be helpful to understand why these behaviors occur and how to respond to them.

- [Special Education Para] has been [Student]'s special education para since April 2016. She provides 1:1 service to [Student] and is with her during the entire school day. She testified that [Student] is easily distracted and often appears disconnected. She typically must be prompted to do her work and answer questions about what she is learning. She has difficulty retaining what she has learned. She becomes easily upset and in the past has engaged in tantrums that included yelling, biting herself, and tipping over desks and chairs. Although some behaviors have improved, she still has angry outbursts and breaks pencils or markers, throws things on the floor, or closes her VisioBook and refuses to do her work. These behaviors often appear randomly, making it difficult to understand what triggers them. [Special Education Para] believes that [Student]'s behaviors are adversely affecting her ability to learn.<sup>5</sup>

- [Special Education Teacher] is [Student]'s current special education teacher. She is certified to teach students with severe and moderate needs, but has no special expertise working with the visually impaired. [Student] is [Special Education Teacher]'s first blind student, but [TVI Teacher One] and [TVI Teacher Two] often assist [Student] with her vision-related needs. [Special Education Teacher] works with [Student] in a small group setting in literacy and math. [Student] receives many accommodations, including preferential seating, use of the VisioBook, enlargement of written materials, oral instruction, and use of enlarged manipulatives. An example of a manipulative is a circular object divided into sections that helps the

---

4 A Braille is a Braille typewriter.

5 Examples of these behaviors, as documented by [Special Education Para], are included in exhibits 10 and 23.

student understand fractions. [Special Education Teacher] rates [Student]'s mathematical abilities at the 1<sup>st</sup> or 2<sup>nd</sup> grade level. She can sometimes perform at a 3<sup>rd</sup> grade level, but has difficulty retaining what she has learned. [Student] has good days and bad days. On bad days, she simply "shuts down" and will not do her work. [Special Education Teacher] cannot predict when [Student] will shut down and cannot tell why she does so. [Special Education Teacher] also has concerns that [Student] is having difficulty maintaining her hygiene. [Special Education Teacher] does not believe these problems are caused solely by [Student]'s visual impairment. She believes that a cognitive assessment such as the Woodcock Johnson test is necessary to determine [Student]'s true academic ability, and a behavioral assessment is necessary to better understand what is causing her behavioral issues. The assessments will also identify [Student]'s strengths so that her teachers can capitalize on those strengths. In [Special Education Teacher]'s opinion, the evaluations must be done this year because [Student] will be transitioning to middle school and her new teachers will need the information to understand her disabilities and how to respond to them.

- [Special Education Coordinator] is a District 51 Special Education Coordinator with responsibility for 14 elementary schools. She has worked with Respondents since August of 2017 when they requested a new IEP. [Special Education Coordinator] noted that by law a reevaluation of eligibility and necessary services is required every three years. [Student]'s reevaluation is due now. Therefore, when Respondents asked for a new IEP, the district planned to advance the triennial evaluation so that it could be used to assist with preparation of the new IEP. Although new assessments are not always necessary to complete a triennial evaluation, [Special Education Coordinator] believes they are essential in [Student]'s case for all the reasons explained by the other witnesses.

- [Senior Special Education Coordinator] is District 51's senior Special Education Coordinator with 35 years of experience in special education. She helped establish the significant needs program at [Elementary School], and in that capacity has known [Student] for several years. [Senior Special Education Coordinator] believes that, apart from her vision impairment, [Student] suffers from global developmental delays that interfere with her ability to achieve typical academic and behavioral milestones. [Student] has been making some progress toward her IEP goals, but she is not at grade-level and the gap is growing. [Senior Special Education Coordinator] shares the opinion of the other District 51 witnesses that additional assessments are required to better understand what is affecting [Student]'s ability to learn. Such assessments must include a behavior analysis to identify what triggers the behaviors that interfere with [Student]'s learning. It is important to understand those triggers to avoid situations where [Student] cannot succeed. In addition, a current cognitive evaluation such as the Woodcock-Johnson assessment is necessary to accurately identify [Student]'s strengths and weaknesses. These assessments must be done now so that an appropriate middle school placement can be selected. It is not possible to write an effective IEP

without the testing necessary to provide the required data.

14. Based upon these concerns, District 51 staff prepared a PWN on October 16, 2017 seeking Respondents' consent for the evaluations the IEP team felt were necessary. These included vision, cognitive, academic and behavioral assessments. Ex. 5.

15. On November 3, 2017, Respondents sent District 51 a letter agreeing to consider a vision assessment, but declining consent for any additional cognitive, academic or behavioral assessments. Ex. 6.

16. On November 27, 2017, [Special Education Coordinator] sent Respondents a letter explaining that, in the IEP team's opinion, the requested assessments were necessary for District 51 to meet its obligation to provide [Student] with a free appropriate public education (FAPE) as required by law. [Special Education Coordinator] again asked Respondents for their consent to perform the evaluations. Ex. 7.

17. Respondents asked to meet with the District 51's Chief Academic Officer, [Chief Academic Officer], to discuss the request for consent. This meeting occurred on January 11, 2018, with Respondents, [Chief Academic Officer], and [Senior Special Education Coordinator] in attendance. According to [Senior Special Education Coordinator]'s meeting notes, she and [Chief Academic Officer] explained that the requested assessments would "give them vital information regarding how [[Student]] learns, processes, problem solves, etc. and would help determine methods of instruction." Respondents, however, continued to express concerns about the assessments, including a concern that because District 51 had not provided [Student] with services appropriate to educate a blind student, her scores on an intelligence test would likely be skewed to the low side. They remained convinced that [Student]'s primary disability is impairment of her vision and that cognitive, academic and behavioral assessments are unnecessary. Ex. 8.

18. To address some of Respondents' concerns, District 51 offered to allow Respondents to bring an advocate or expert on visual impairment to the formal IEP team meeting to assist the team interpret the assessment results. District 51 also offered to have a team from the Colorado School for the Deaf and Blind (CSDB) perform the assessments. Respondents declined both offers. Ex. 8.<sup>6</sup>

19. The parties did, however, agree to schedule another RED meeting that an expert or advocate of Respondents' choice could attend. That meeting was held on January 24, 2018 with all IEP members in attendance. Respondents invited [ ], a private businessman and associate of the National Federation of the Blind. During the two-hour meeting, several District 51 staff members explained why they thought additional assessments were necessary. Respondents again expressed reservations, asserting their belief that education and services to properly address [Student]'s visual impairment was all that was needed. Ex. 24.

20. At the conclusion of the meeting, [Senior Special Education Coordinator]

---

6 Though not reflected in the meeting notes, Respondents countered the offer of testing by CSDB with the suggestion that [Student] be tested by personnel from the Perkins School for the Blind. District 51 declined the counteroffer because the Perkins school is not located in Colorado.

provided Respondents a new consent form asking for consent to perform formal cognitive, behavioral, vision and academic assessments. Ex. 9. Respondents asked for additional time to consider the request, but ultimately refused to consent. Ex. 26.

21. On February 7, 2018, District 51 filed the present complaint seeking to override Respondents' refusal to provide consent.

22. At the hearing, Respondents submitted an evaluation from the Moran Eye Center at the University of Utah performed on April 11, 2018, and a neuropsychological evaluation performed at the University of Utah Outpatient Neuropsychology Clinic in October 2016. Ex. A. Respondents contend that these evaluations prove that [Student]'s primary disability is her visual impairment, and satisfy any possible need for additional assessments.

23. The neuropsychological evaluation confirms that, in addition to her visual impairment, [Student] has global developmental delays. According to the evaluation report, [Student]'s verbal processing ability is average for her age, but her expressive fluency is impaired. Her verbal/auditory memory is also impaired based on free recall, although it improved with prompting. She was easily distracted during testing which interfered with response consistency and learning. She was sensitive to what she perceived as difficult questions, and her motivation and effort fluctuated as questions or tasks became more difficult. As a result, her performance on tests assessing memory and learning was variable.

24. [Senior Special Education Coordinator] testified that although the IEP team will consider these evaluations, they do not satisfy District 51's need for more thorough testing. In particular, the neuropsychological evaluation is not sufficient because certain aspects of [Student]'s cognitive abilities were not assessed, and her potential visual ability could not be assessed because adaptive visual technology was not available. Furthermore, no behavioral assessments were done. Consequently, [Senior Special Education Coordinator] believes the assessments District 51 requests are still necessary.

25. [Senior Special Education Coordinator] says that Respondents' concern that cognitive testing may be skewed low due to deficiencies in [Student]'s education is not valid. Cognitive assessments do not test what the child knows, but rather assess the child's ability to learn.

26. Respondent [Father] testified that [Student]'s vision is the only impairment to her education and additional assessments are not necessary. He believes District 51 has failed to recognize this, and consequently has not provided the necessary support. In particular, he is critical of District 51's reluctance to focus on instruction in Braille and use of a white cane. He believes the time allowed for TVI support is woefully inadequate. He thinks that the district is not equipped to develop the data it seeks, and that the records the district relies upon to justify its request are incomplete and incorrect. He is disappointed that District 51 has never convened the formal IEP team meeting that he requested in August 2017.



## Discussion

### *I. The Controlling Legal Principles*

#### *A. Burden of Proof*

Although the IDEA does not explicitly assign the burden of proof, *Schaffer v. Weast*, 546 U.S. 49, 58 (2005) places the burden of persuasion “where it usually falls, upon the party seeking relief.” That is to say, “the person who seeks court action should justify the request.” *Id.* at 56 (quoting C. Mueller & L. Kirkpatrick, *Evidence* § 3.1, p. 104 (3d ed. 2003)). Although parents are typically the party seeking relief, the rule applies with equal effect to a school district when it is the party seeking court action. *Id.* at 62. Because District 51 is the party asking the ALJ to enter an order overriding Respondents’ refusal to consent to requested assessments, District 51 must bear the burden of proving that those assessments are necessary and Respondents’ consent has been unreasonably withheld.

#### *B. The Requirement of FAPE*

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). Central to the IDEA is the requirement that school districts develop, implement, and revise an IEP calculated to meet the eligible student’s specific educational needs. 20 U.S.C. § 1414(d).

The IEP is a written statement that must identify the child’s present level of academic achievement and functional performance, including a statement as to how the child’s disability is affecting the child’s academic progress. 34 CFR § 300.320(a)(1). Furthermore, the IEP must include a statement of measurable goals designed to meet the child’s needs, and a statement of how the child’s progress in meeting those goals will be measured. 34 CFR §§ 300.320(a)(2) and (3). The IEP must also include a statement of the special education and related services necessary to enable the child to make progress in meeting the goals and to make progress in the general education curriculum. 34 CFR § 300.320(a)(4). IEPs must be reviewed annually. 34 CFR § 300.324(b).

#### *C. Evaluations and Reevaluations*

As a predicate to preparing an appropriate IEP, the school district must conduct an initial evaluation to determine the nature of the child’s disability, if any, and the child’s educational needs. 34 CFR § 300.301(c)(2). The evaluation must include “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child” sufficient to meet the purpose. 34 CFR § 300.304(b)(1). The school district must ensure the child is assessed “in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” 34 CFR § 300.304(c)(4). The evaluation must be “sufficiently comprehensive to identify all of the child’s special education needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 CFR § 300.304(c)(6).

Reevaluations are required every three years but may be required earlier if the school district determines that the child's educational needs warrant an earlier reevaluation. 34 CFR § 300.303. As part of a reevaluation, the school district must review existing data to determine what additional data is needed to see if the child continues to need special education, and if so, what "additions or modifications" to the IEP may be necessary to meet the child's educational needs. 34 CFR § 300.305(a)(2)(iv). The school district must then administer "such assessments and other evaluation measures as may be needed to produce the data identified." 34 CFR § 300.305(c).

Evaluations and reevaluations both require informed parental consent. 34 CFR §§ 300.300(a) and (c). In the case of a reevaluation, if the parent refuses consent the school district "may, but is not required to, pursue the reevaluation by using the consent override procedures." 34 CFR § 300.300(c)(ii). The consent override procedures permit the school district to file a due process complaint seeking an ALJ order permitting the reevaluation to go forward without parental consent. 34 CFR § 300.300(a)(3)(i); *G.J. v. Muscogee County Sch. Dist.*, 668 F.3d 1258, 1263 (11<sup>th</sup> Cir. 2012). Then, if the parents still want their child to receive special education under the IDEA, they must permit the testing. *Shelby S. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454-55 (5<sup>th</sup> Cir. 2006), citing *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9<sup>th</sup> Cir. 1987).

## *II. The Principles as Applied to this Case*

The ALJ is convinced by the testimony of District 51's witnesses, particularly the observations of her special education teacher, paraprofessional, and TVIs, that [Student]'s visual impairment is not the only thing interfering with her ability to learn. Clearly, her reluctance to perform tasks without prompting, inability to retain learned material, low threshold of frustration, lack of focus, easy distraction and unpredictable tantrums are all impediments to learning that do not appear to be directly related to her visual impairment. It is essential that thorough assessments be performed so that the cause of these behaviors are better understood and her cognitive strengths and weaknesses can be identified. Therefore, District 51's request for consent to perform cognitive, academic and behavior assessments is not only reasonable, but in fact required by law. As previously noted, 34 CFR §§ 300.305(a)(2) and (c) require a school district to identify the additional data it needs to accurately determine a child's disability and educational needs, and then seek permission to administer the assessments needed to produce that data. If District 51 did not do these things, it would arguably fail in its obligation to provide [Student] with a free appropriate public education.

Not only is District 51's request for consent reasonable, but Respondents' refusal to provide that consent is unreasonable. Respondents' concern that [Student]'s cognitive testing results might be skewed low due to her allegedly inadequate education is unfounded because cognitive testing is intended to identify [Student]'s ability to learn, not the extent of her knowledge. Respondents' contention that [Student]'s visual impairment is the only impediment to her learning is clearly not true, given the observations of her teachers. The neuropsychological evaluation obtained by Respondents confirms that [Student] has global developmental delays. Respondents' suggestion that they have not

been provided with sufficient explanation of why additional assessment is necessary is also not true. District 51 has gone to great lengths, both verbally and in writing, to explain why it believes additional assessments are necessary.

Although District 51 must take into consideration the vision and neuropsychological evaluations Respondents present, District 51 is not obligated to accept them in place of the evaluations it considers necessary. A school district is “entitled to reevaluate [a child] by an expert of its choice . . . [t]he school cannot be forced to rely solely on an independent evaluation conducted at the parents’ behest.” *G.J. v. Muscogee County Sch. Dist.*, 668 F.3d at 1263.

To the extent that Respondents have legitimate concern that District 51 is not providing services adequate to address [Student]’s visual impairments, they should raise those concerns during the formal IEP meeting that will occur once the requested assessments have been completed. If at that point Respondents believe the revised IEP is still not adequate to provide [Student] with FAPE, they may choose to file a state complaint or make their own request for a due process hearing.

### **Decision**

Because District 51’s request for consent to perform additional assessments is reasonable and Respondents’ refusal is not, Respondents’ refusal to provide consent is overridden. If Respondents wish [Student] to continue receiving special education under the IDEA, they must permit the assessments requested by District 51.

This is a final decision subject to judicial review as provided by 34 CFR § 300.516.

### **Done and Signed**

April 26, 2018



---

ROBERT N. SPENCER  
Administrative Law Judge

Hearing recorded electronically and by court reporter

Exhibits admitted

For Petitioner: exhibits 1, 2, 5-11, 15, 16, 22-28, 30-32

For Respondent: exhibit A