

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4 th Floor, Denver, CO 80203	
ROARING FORK SCHOOL DISTRICT RE-1 Complainant, vs. [Parent], on behalf of minor child [STUDENT], Respondent.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> CASE NUMBER: EA 2023-0041
DECISION	

A hearing was held by Google Meet before Administrative Law Judge Aaron S. Hockman from the Office of Administrative Courts in Denver, Colorado on February 9, and February 16, 2024. Roaring Fork School District RE-1 (District) appeared through [Special Education Director], and was represented by counsel, Robert P. Montgomery, Semple, Farrington, Everall & Case, P.C. [Parent] appeared and represented herself, and [Student]

[Special Education Director], [Speech Language Pathologist], [Occupational Therapist], [Board Certified Behavior Analyst], [Special Education Teacher], [School Psychologist], and [Parent] provided testimony. Exhibit 1 through 16, 16A, 17, E (pages 1 through 35), E2, F, J, O (limited purpose as a historical, or procedural document), and U were admitted into the record. Some exhibits proposed by the District were also proposed by [Parent]. The District stipulated to the admission of duplicate exhibits, minus any highlights made by [Parent].

Ruling on the admissibility of Exhibit P was reserved. I decline to admit Exhibit P into the record on the basis of hearsay. While statements made for the purposes of medical diagnose or treatment are admissible as an exception to the hearsay rule, Exhibit P is an ABA ADLS assessment. Therefore, it contains not merely statements made for the purpose of medical diagnosis or treatment, but also the assessor’s conclusions and

recommendations. As the assessor did not testify in this matter, the statements are inadmissible hearsay.¹

ISSUES

1. Whether Roaring Fork School District RE-1's March 2023 evaluation of [Student] was appropriate?
2. Whether [Parent] is entitled to an Independent Educational Evaluation at public expense?

FINDINGS OF FACT

I find the following facts more probable than not, under a preponderance of the evidence standard:

1. [Student] is a 17-year-old student enrolled at Roaring Forks School. Between August 2021 and December 2022, [Student] was enrolled in [District School], in the Roaring Forks School District RE-1.² His home school is [District School].³ There is no dispute [Student] qualifies for special education under the Individuals with Disabilities Act (IDEA), and the Colorado Exception Children's Education Act (ECEA), under the eligibility categories of Autism Spectrum Disorder (ASD), and Specific Learning Disability (SLD) in the area of writing.⁴
2. [Student] has 15 credits towards graduation. The District notes he may remain in special education through age 21.⁵
3. In the fall of 2022, [Parent] requested an Independent Educational Evaluation (IEE) at public expense, and requested the evaluation be performed by [Licensed Psychologist], a licensed psychologist with [Private Agency 2]. The District agreed.⁶
4. In conducting the evaluation, [Licensed Psychologist] performed a number of formal and informal assessments between October 18, 2022 and November 18, 2022, including an in-person assessment and observation of [Student] at [District School].⁷ [Licensed Psychologist] also reviewed records of the Student's medical

¹ See C.R.S. § 24-4-105(4); CRE 802, and 803(4).

² Testimony of [Parent]; Exhibit E, page 1; Exhibit 3.

³ *Id.*

⁴ *Id.*

⁵ Testimony of [Parent]; Testimony of [Special Education Director].

⁶ Testimony of [Special Education Director]; Exhibit 1, pages 1, 9.

⁷ Exhibit 1.

and educational history, including a report from 2019 wherein the Student was diagnosed with ASD.⁸

5. [Licensed Psychologist's] report included the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) which is a comprehensive cognitive assessment.⁹ The WISC-V or other cognitive assessments should not be performed more than annually.¹⁰
6. [Licensed Psychologist's] report also included the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2), which is an assessment of a child's executive functioning needs and skills.¹¹ The BRIEF-2 should not be performed more than annually.¹²
7. [Licensed Psychologist's] report also included the Woodcock-Johnson IV-Tests of Achievement (WJ-IV) which is a comprehensive assessment of a student's academic levels.¹³ The WJ-IV and other standardized assessments should not be performed more than annually because, as the student sees the test more often, there is risk that the results will be invalidated.¹⁴ With the WJ-IV, the testing affirmed that the Student struggles with writing, which demonstrated that he was properly identified as a student with a specific learning disability who requires special education in the area of writing.¹⁵
8. [Licensed Psychologist's] report included the Vineland Adaptive Behavior Scales, Third Edition (Vineland) which is an assessment of a student's adaptive behaviors, including independent living skills.¹⁶ Adaptive behaviors include certain social and practical skills such as everyday living skills.¹⁷
9. [Licensed Psychologist's] report included the Behavior Assessment System for Children, Third Edition (BASC-3) which is a comprehensive assessment of a child's social and emotional functioning "used to evaluate the behavior and self-

⁸ *Id.*

⁹ Testimony of [School Psychologist]; Exhibit 1, page 21.

¹⁰ *Id.*

¹¹ Testimony of [School Psychologist]; Exhibit 1, page 22.

¹² Testimony of [School Psychologist].

¹³ Testimony of [School Psychologist]; Testimony of [Special Education Teacher]; Exhibit 1, page 24.

¹⁴ Testimony of [School Psychologist]; Testimony of [Special Education Teacher].

¹⁵ Testimony of [School Psychologist]; Testimony of [Special Education Teacher]; Exhibit 1, page 24.

¹⁶ Testimony of [School Psychologist]; Exhibit 1, page 29.

¹⁷ Testimony of [School Psychologist].

perceptions of children.”¹⁸ The BASC-3 should not be administered more than once in a calendar year.¹⁹ The BASC-3 can be used to identify other areas of social and emotional functioning that may need to be tested further.²⁰ In this case, two areas of social and emotional functioning [Licensed Psychologist] examined in more detail were the Student’s executive functioning skills with the BRIEF-2, and the Student’s levels of adaptive functioning, which was assessed with the Vineland.²¹

10. [Licensed Psychologist’s] report included the Social Responsiveness Scale, Second Edition (SRS-2) which is an assessment “designed to measure symptoms associated with Autism” and provides information about a student’s social communication skills.²² The SRS-2 should not be administered more than once in a calendar year.²³
11. In addition to [Licensed Psychologist’s] report, [Parent] requested an assessment of the Student’s motor function, particularly “to determine if visual-motor skills or sensory differences were impacting his access to writing tasks in class.”²⁴ Accordingly, in December 2022, District occupational therapist, [Occupational Therapist], performed several formal and informal assessments of the Student.²⁵
12. [Occupational Therapist] performed a Beery-Buktenica Developmental Test of Visual-Motor Integration (“Beery VMI”), an Adolescent Sensory Profile, and interviewed teachers and observed the Student in class.²⁶ Generally, [Occupational Therapist’s] data indicated that the Student functioned within the average range for his same age peers in the area of visual-motor skills and sensory functioning, but identified certain needs for the IEP team to consider accommodations for the Student.²⁷ [Occupational Therapist’s] report is dated December 2, 2022.
13. On November 20, 2022, a State Complaints Officer (SCO) for the Colorado Department of Education determined that the District violated the IDEA, and

¹⁸ Testimony of [School Psychologist]; Exhibit 1, page 25.

¹⁹ Testimony of [School Psychologist].

²⁰ *Id.*

²¹ *Id.*

²² Testimony of [School Psychologist]; Testimony of [Speech Language Pathologist]; Exhibit 1, page 28.

²³ Testimony of [School Psychologist]; Testimony of [Speech Language Pathologist].

²⁴ Exhibit 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Testimony of [Occupational Therapist]; Exhibit 2.

ordered the District to reevaluate [Student]²⁸ As part of the reevaluation, the SCO ordered the District to conduct a comprehensive evaluation of [Student] “in all possible areas of need”. The District was allowed to determine the appropriate evaluations and evaluators, but the evaluations must be conducted in all areas of suspected need, and must include a functional behavior assessment (FBA).²⁹ The SCO also ordered that the District’s school psychologist, [School Psychologist 2], could not perform the FBA.³⁰ Instead, the FBA needed to be completed by a Board Certified Behavior Analyst (BCB).³¹

14. The District sought consent to evaluate.³² In the process of getting consent for the reevaluation, the Parent, through counsel, told the District that there were certain areas that should not be reevaluated because [Licensed Psychologist] had recently evaluated in those areas.³³ Specifically, Parent’s counsel stated: “here are the assessments [Licensed Psychologist] conducted via the IEE, and obviously we don’t want these (or their functional equivalents) re-administered now.”³⁴ Those assessments included the WISC-V, the BRIEF-2, the WJ-IV, the BASC-3, the SRS-2, and the Vineland.³⁵ The District agreed that it was not necessary to reassess the Student in those areas since [Licensed Psychologist] had recently conducted those evaluations.³⁶ CDE approved the course of action agreed to by the parties.³⁷
15. The District maintains to re-administer those same assessments only four months later would have been contrary to the standards set by the tests themselves, and likely invalidated the scores.³⁸
16. [Parent] wanted further assessment by the occupational therapist (“OT”), assessment in the area of communication by a speech and language pathologist, and a functional behavior assessment.³⁹ The District memorialized the

²⁸ Exhibit O.

²⁹ *Id.*

³⁰ Exhibit O, pages 41, and 42; Exhibit 3, page 1.

³¹ Exhibit A; page 1; Exhibit O.

³² Testimony of [Special Education Director].

³³ Exhibit 6.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Testimony of [Special Education Director];

³⁷ Testimony of [Special Education Director]; Exhibit 6.

³⁸ Testimony of [Special Education Director]; Testimony of [Special Education Teacher]; [School Psychologist]; and [Speech Language Pathologist].

³⁹ Exhibit 6; Exhibit 8.

reevaluation plan in a “Prior Notice & Consent for Reevaluation” form.⁴⁰ The District reevaluated the Student, culminating in an evaluation report dated March 23, 2023.⁴¹

17. The evaluation report included a description of the communicative status assessments performed by District speech language pathologist (SLP), [Speech Language Pathologist], including: (1) A Clinical Evaluation of Language Fundamentals (CELF-5); (2) a file review of [Licensed Psychologist’s] SRS-2 and other assessments; (3) a social language observation; and (4) a pragmatic language questionnaire from teachers and parents.⁴² Prior to beginning her assessments of [Student], [Speech Language Pathologist] contacted [Parent] and outlined her assessment plan, including a review of the records of [Licensed Psychologist’s] report.⁴³ [Parent] agreed.⁴⁴
18. District special education teacher, [Special Education Teacher], evaluated the Student’s academic performance. The review included a discussion of his grades and observations of classroom teachers from each of the Student’s classes.⁴⁵ The academic review also considered the Student’s attendance, state assessments, and review of the WJ-IV from [Licensed Psychologist’s] report.⁴⁶
19. The District contracted with [Board Certified Behavior Analyst], a Board Certified Behavior Analyst (BCBA) from [Private Agency] to perform an FBA.⁴⁷ An FBA is an assessment that identifies the pervasive behaviors interfering with a student’s ability to access education, and identifies the function of those behaviors to assist in the development of a behavioral intervention plan (BIP).⁴⁸ [Board Certified Behavior Analyst’s] FBA of [Student] followed the CDE’s recommended guidelines and met his own expert standards for conducting an FBA.⁴⁹ The FBA identified target behaviors for the IEP team to consider including academic engagement, receptiveness to instruction, social engagement, and task initiation.⁵⁰ Moreover, the FBA noted that the Student had previously engaged in inappropriate behavior

⁴⁰ Exhibit 8

⁴¹ Exhibit 3.

⁴² Exhibit 3, pages 1 through 6.

⁴³ Testimony of [Speech Language Pathologist]; Exhibit 17.

⁴⁴ *Id.*

⁴⁵ Exhibit 3, pages 7 through 9.

⁴⁶ Exhibit 3, page 8.

⁴⁷ Exhibit 3, page 9; Exhibit 5.

⁴⁸ Testimony of [Board Certified Behavior Analyst].

⁴⁹ Testimony of [Board Certified Behavior Analyst]; Exhibit 5.

⁵⁰ Exhibit 5, pages 6 and 7.

on a school bus when he [displayed inappropriate behavior] around younger students.⁵¹ The FBA notes that the “[incident] appears to be an isolated incident.”⁵² Where a behavior only happens in isolation, and does not occur frequently in a manner that impacts a student’s day to day functioning in school, it is not something that should be targeted in an FBA.⁵³ Moreover, it would not have been helpful to extend the FBA to a bus because [Student] is no longer riding the school bus.⁵⁴

20. District OT, [Occupational Therapist], conducted further motor assessments for [Student]⁵⁵ [Occupational Therapist] reviewed his past records including her evaluations from December 2022.⁵⁶ Even though she had performed a sensory profile in December 2022, she performed another sensory profile survey in March 2023 asking the same questions to school psychologist [School Psychologist 2], rather than the Student.⁵⁷ [Occupational Therapist] redid the sensory profile in this manner because the Parent had expressed concern that [Student] may not have accurately self-reported on the previous assessment.⁵⁸ Moreover, she chose [School Psychologist 2] because [Parent] provided feedback that [School Psychologist 2] knew [Student] best of his current teachers and providers.⁵⁹ In addition, [Occupational Therapist] assessed [Student’s] independent living skills, including his ability to fill out a job application and access the school environment.⁶⁰ Finally, the evaluation report included a review of [Licensed Psychologist’s] report.⁶¹
21. There is a dispute whether [Student’s] job application is appropriate, given his circumstances.⁶² On review of the application, it appears appropriate, other than his answer to a reference, listing “friend”.
22. The assessments culminated in an evaluation dated March 23, 2023.⁶³

⁵¹ Exhibit 5, page 8.

⁵² *Id.*

⁵³ Testimony of [Board Certified Behavior Analyst].

⁵⁴ Exhibit 5, page 20.

⁵⁵ Exhibit 3, pages 9 and 10.

⁵⁶ Testimony of [Occupational Therapist]; Exhibit 3, page 9.

⁵⁷ Testimony of [Occupational Therapist]; Exhibit 3, page 10.

⁵⁸ Testimony of [Occupational Therapist]; Exhibit 3, page 9.

⁵⁹ Testimony of [Occupational Therapist]; Exhibit 3, page 10.

⁶⁰ Testimony of [Occupational Therapist].

⁶¹ Exhibit 3, pages 1, 10, and 11.

⁶² Testimony of [Occupational Therapist]; Testimony of [Parent]; Exhibit 9.

⁶³ Exhibit 3.

23. The Student's IEP team met on March 23, 2023 to discuss the evaluation report. Amongst the participants were [Parent], [Special Education Director], [Special Education Teacher], [Occupational Therapist], [Speech Language Pathologist], the school principal, assistant director of special education), a school psychologist, and the clinical director of [Private Agency], [Clinical Director of Private Agency], attended the meeting to discuss [Board Certified Behavior Analyst's] FBA. The team discussed the evaluation results in their entirety, and no issues were raised as to whether the evaluation was comprehensive.⁶⁴
24. [Speech Language Pathologist] reviewed the results of the communicative status assessment. No meeting participants had questions or concerns about the communicative status assessments.⁶⁵
25. [Special Education Teacher] discussed the results of the academic assessments, including [Licensed Psychologist's] results. The team discussed the results, including specific interventions in place for the Student for more than thirty minutes. Many participants had questions or comments about certain services provided to the Student and the Student's response to such interventions. However, no participants questioned the evaluation results, its comprehensiveness, or questioned whether it failed to identify the Student's needs.⁶⁶
26. [Occupational Therapist] discussed the results of the motor assessments. The Parent inquired about the assessment into the Student's independent living skills. [Occupational Therapist] explained the necessity of assessing a student's independent living skills as it pertains to accessing school, and explained that anything related to out-of-school functioning is typically considered by non-school based professionals. Indeed, it is necessary to assess what a student needs to access public school. No member of the IEP team followed up on [Occupational Therapist's] explanation. At hearing, [Occupational Therapist] testified that it is important to consider what skills a student needs in school, and whether a lack of skills impacts their access to school.⁶⁷
27. The team discussed whether it was necessary to review [Licensed Psychologist's] report. The team agreed it was not necessary. Specifically, the Parent expressed

⁶⁴ Exhibit 16.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Testimony of [Occupational Therapist]; Exhibit 16.

that [Licensed Psychologist's] report was "extensive and well done" and noted that it had "already been talked about" in several meetings.⁶⁸

28. Finally, the team reviewed [Board Certified Behavior Analyst's] FBA. The Parent was pleased with the FBA."⁶⁹
29. [Parent] takes issue with the evaluation process, and maintains the District has not complied with the SCO's order, or applicable law, and failed to perform a comprehensive evaluation in all areas, including ones not related to [Student's] disability. Additionally, she argues the academic evaluations were insufficient and failed to look at [Student's] current situation; the FBA was limited and incomplete; social boundaries and social interactions were not addressed, social-emotional and adaptive/functional evaluations were not completed, adaptive daily living skills were not reviewed, transition assessment was not reviewed, specific learning disabilities were not addressed, there was an inadequate scope of OT evaluation, which failed to address processing speed, transportation was not addressed, nor were [Student's] exceptional abilities.

CONCLUSION OF LAW

Based on the foregoing findings of fact, I make the following conclusions of law:

1. The Office of Administrative Courts, and the undersigned, have jurisdiction over the persons and subject matter in this case, pursuant to § 24-4-105 Colorado Revised Statutes, 1 Code of Colorado Regulations (CCR) 301-8 §§ 6.02, 6.02(7.5)(c), 6.02(7.5)(f), and 34 Code of Federal Regulations (CFR) §§ 300.502(b)(2), 300.508, 300.511(b).
2. The parent of a child with a disability has the right to obtain an independent educational evaluation (IEE) of the child, at public expense, subject to certain restrictions.⁷⁰ The parent may request the IEE if they disagree with the evaluation obtained the District.⁷¹
3. An IEE is an evaluation conducted by a qualified examiner, not employed by the District.⁷²

⁶⁸ Exhibit 16.

⁶⁹ Testimony of [Parent]; Exhibit 16.

⁷⁰ 34 CFR §§ 300.502(a)(1), and (3), 34 CFR § 300.502(b).

⁷¹ 34 CFR § 300.502(b)(1).

⁷² 34 CFR § 300.502(a)(3)(i).

4. When a parent asks for an IEE at public expense, the District must, without unnecessary delay, grant the request, or file a Due Process Complaint to show that their evaluation is appropriate.⁷³ Here, the District filed a Due Process complaint.
5. An evaluation is a procedure to determine whether a child has a disability, and the nature and extent of the special education and related services that the child may need.⁷⁴
6. When conducting an evaluation, the District must provide notice to the parent, and use a variety as assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, to whether the child has a disability, and the content of the child's IEP.⁷⁵ The District may not use any single measure or assessment as the sole criteria.⁷⁶ The testing instruments must be technically sound, that assess the relative contribution of cognitive, behavioral, physical, and developmental factors.⁷⁷
7. Additionally, the child is to be 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.⁷⁸ The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.⁷⁹ Further, the assessment tools and strategies must provide relevant information that directly assists persons in determining the educational needs of the child are provided.⁸⁰
8. As part of an initial evaluation, or reevaluation, existing data on the child must be reviewed, including information provided by the parent, current classroom observations, and observations from teachers and service providers.⁸¹ Based on

⁷³ 34 CFR § 300.502(b)(2).

⁷⁴ 34 CFR § 300.15.

⁷⁵ 34 CFR § 300.304(a) and (b).

⁷⁶ 34 CFR § 300.304(b)(2).

⁷⁷ 34 CFR § 300.304(b)(3).

⁷⁸ 34 CFR § 300.304(b)(4).

⁷⁹ 34 CFR § 300.304(b)(6).

⁸⁰ 34 CFR § 300.304(b)(7).

⁸¹ 34 CFR § 300.305(a)

that review, additional data, if any, should be identified to determine the present levels of academic achievement and related developmental needs of the child.⁸²

9. The first issue in this matter is whether the March 23, 2023 evaluation was “appropriate” Whether the evaluation is appropriate is a question of compliance with the SCO’s order, and this applicable CFRs. The District was to conduct a comprehensive evaluation of [Student] in all possible areas of need, and must include a FBA. This is generally the standard in the CFRs (34 CFR § 300.304(b)(4)).
10. Here, the March 2023 evaluation relied on the assessments of [Licensed Psychologist]. As these tests should not be administered more than once annually, I conclude it was appropriate to rely on them. The tests were not discredited by the SCO’s order. Further, the District is required by regulation to review existing records in reassessments.
11. The evaluation completed additional occupational therapy, communicative status assessments, academic assessments, and FBAs. There is no evidence the assessments were inappropriate. Now [Parent] essentially challenges the scope of the assessments in these areas. There is no evidence these assessments indicated additional or further evaluation was required.
12. [Parent] also argues transition planning should have occurred. As [Student] currently has 15 credits towards graduation, and may be in special education through age 21, I conclude transition planning would be premature. Certainly he will need transition planning in the future.
13. [Parent] also argues transportation needs should have been addressed. I am persuaded by the District’s argument *Boulder Valley School District RE-2* is applicable to this matter. As [Student’s] home school is [District School], not [District School 2], he is not entitled to transportation services.⁸³
14. It is very clear to the Court that [Parent] loves, and has [Student’s] best interests are heart, particularly by ensuring [Student] receives all the services to which he is eligible, or may need. However, I conclude the District has shown by a preponderance of the evidence that their March 23, 2023 evaluation was

⁸² 34 CFR § 300.304(a)(2)(ii).

⁸³ 123 LRP 24955 *8 (SEA CO 2023) *citing El Paso Cnty. Sch. Dist. #11*, 120 LRP 8085 (SEA CO 2019); *Fick v. Sioux Falls Sch. Dist.*, 337 F.3d 968 (8th Cir. 2003); *Timothy H. v. Cedar Rapids Cmty. Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999).


appropriate, as they assessed [Student] in additional areas of need, while essentially building upon existing information. As such, [Parent] is not entitled to an IEE at public expense.

DECISION

Roaring Forks School District RE-1 has shown by a preponderance of the evidence that the March 23, 2023 evaluation was appropriate. As such, [Parent] is not entitled to an IEE at public expense.

This decision is the final decision of the independent hearing officer pursuant to 34 C.F.R. §§ 300.514(a) and 300.515(a). Any party has the right to bring a civil action in appropriate court of law, either federal or state, pursuant to 34 C.F.R. § 300.516.

Done and Signed: March 1, 2024



Aaron S. Hockman
Administrative Law Judge