



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 01869-20

AGENCY DKT. NO. 2020-31022

**PEQUANNOCK TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

K.K. ON BEHALF OF G.R.,

Respondent.

Athina Lekas Cornell, Esq., for petitioner (Sciarrillo, Cornell, Merlino, McKeever
& Osborne, attorneys)

Esther M. Canty-Barnes, Esq., for respondent (Rutgers University Special
Education Clinic School of Law)

Record Closed: June 9, 2021

Decided: July 12, 2021

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and state regulations. The Pequannock Township Board of Education (the District or Pequannock) is seeking an order denying

the respondent's request for independent educational evaluations (IEEs), and asserts that the evaluations conducted by the District were appropriate. Respondent, K.K. on behalf of G.R. (parent or respondent), asserts that she is entitled to the requested IEEs as a matter of law, and that the District's evaluations are not appropriate.

PROCEDURAL HISTORY

On December 12, 2019, the District filed a request for mediation/due process seeking an order denying respondent's request for three independent evaluations. On December 19, 2019, the District filed a second request for due process seeking to amend the December 12, 2019, due-process petition, requesting an order denying respondent's request for an audit of the District's autism program "to the extent the request was considered an IEE." The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 7, 2020. The hearing was initially scheduled for November 18, 2020, but converted to oral argument to address the District's motion for summary decision that was filed on or around October 19, 2020, and opposed by the respondent. On November 25, 2020, I issued an order granting the District's motion in part. Specifically, the District's motion for summary decision was granted with respect to its denial of respondent's demand for an IEE of the District's autism program, but denied with respect to respondent's demand for an educational IEE and occupational therapy (OT) IEE. I reserved my decision with respect to the District's application to dismiss the respondent's request for a Functional Behavioral Assessment (FBA) IEE. A hearing was held on December 15, 2020. The parties presented post-hearing briefs on June 9, 2021, at which time the record closed.

FACTUAL DISCUSSION

At the hearing, the District offered testimony by the District's occupational therapist, Mayra Fajardo (Fajardo); the District's learning disabilities teacher-consultant (LDT-C) and case manager, Lindsay Corbett (Corbett); and the District's board-certified behavior analyst (BCBA), Lauren Habermas. K.K. testified on her own behalf. The facts are largely undisputed. Based upon a review of the testimony and the documentary evidence presented, and having had the opportunity to observe the demeanor of the

witnesses and assess their credibility, I **FIND** the following **FACTS**, and accept as **FACT** the testimony set forth below:

G.R. was a second-grade student during the 2018–2019 school year. At all relevant times, G.R. was deemed eligible for special education and related services as meeting the criteria for autism. He attends the District’s North Boulevard Elementary School’s autism program, where he receives speech and language therapy, OT, and physical therapy (PT).

In the spring of 2019, the District agreed to conduct evaluations in approximately nine assessment areas as part of G.R.’s triennial review (as per N.J.A.C. 6A:14). In March 2019, G.R. underwent an educational evaluation, a speech evaluation, and an OT evaluation. In April 2019, he underwent a social evaluation, a psychiatric evaluation, a PT evaluation, and an FBA. In September 2019 he underwent a neurological evaluation and a feeding evaluation. Upon completion of these evaluations, an individualized education program (IEP) meeting was convened in October 2019, which K.K. attended, and it was determined that G.R. continues to qualify for services as meeting the criteria of autism, and the Child Study Team (CST) recommended continued placement in the District’s self-contained autism program, with related services, including speech and language therapy, OT, PT, and behavioral services.

In or around November 2019, the parent, through counsel, requested three IEEs at the District’s expense: an educational evaluation; an OT evaluation; and an FBA. As part of this request, the parent also requested an evaluation of the District’s autism program.¹

Educational Evaluation

On or about March 11, 2019, Corbett conducted an educational evaluation of G.R. as part of his triennial review, and prepared a report. (P-6.) Corbett is now employed as an LDT-C and case manager for another school district. She was previously employed

¹ Respondent’s request for an evaluation of the District’s autism program is not addressed here, as that issue was disposed of previously as a result of the District’s motion for summary decision.

by the District as an LDT-C and case manager from September 2017 through August 2020, where she served on the CST, administered and conducted educational evaluations, and administered educational achievement tests such as the Woodcock-Johnson IV (WJ-IV), the Wechsler Individual Achievement Test—Third Edition (WIAT), and others to determine learning and intervention needs. She has a master's degree in teaching, a certificate from the New Jersey Department of Education as a K–8 teacher, and an LDT-C endorsement (since December 2017). (P-11.)

As part of Corbett's educational evaluation, she conducted the WJ-IV Tests of Oral Language and Tests of Achievement. She noted that these tests measured G.R.'s academic achievement, and his relative strengths and weaknesses together with his academic abilities are described in the report. She testified that the WJ-IV is the most appropriate educational assessment to administer for elementary-level students. She did not administer the WIAT or the Gray Oral Reading Tests because she considered them too "language heavy" and not as comprehensive as the WJ-IV.

Corbett described the elements that comprise the WJ-IV, including an oral-language component, math problem-solving skills, math calculation skills, written expression, reading comprehension, and reading fluency. Corbett testified that she administered the elements of the WJ-IV that she felt were appropriate for G.R. The results of the WJ-IV were attached to Corbett's report, and summarized therein.

As part of her evaluation, Corbett also obtained teacher and parent input, reviewed student records, and conducted two observations of G.R. He was observed in the general-education setting during music rehearsal, as well as in the autism classroom, and Corbett documented her observations in her report. She noted that G.R. was participating during these classroom observations and that he had a one-to-one aide with him.

With respect to the WJ-IV, Corbett testified that G.R. required several prompts to continue working during the assessment, although he did not defer to the aide. She testified that the assessment was conducted in a typical evaluation room, and that it lasted between thirty and forty minutes, with a short break in the testing room. Corbett testified that only G.R. and his aide were present during testing.

She testified that the WJ-IV is only administered for children in kindergarten and above. She testified that the WIAT is a different test that is more language heavy, and that it is inappropriate to compare the two tests. She did not administer the Gray Oral Reading Tests, and testified that she believes the WJ-IV is more comprehensive. She also cautioned against comparisons between testing results using the Test of Nonverbal Intelligence (TONI), which is not language-based, and the WJ-IV, given that the majority of the WJ-IV requires the student to respond orally or with written language.

Corbett's report assesses G.R.'s oral language, written language, mathematics skills, and academic skills. Oral language assesses a student's oral expression and listening comprehension. In oral expression, G.R. was asked to identify pictures with increasing detail and repeat sentences. He scored in the low range for this area. For listening comprehension, G.R. was asked to listen to a statement, then complete it with an appropriate word, to assess word-finding skills, then follow single and multi-step directions while following a detailed picture. Written language consisted of two subtests: spelling and writing. G.R. was asked to spell several words and he was asked to complete a series of sentences. He scored in the low-average range in these areas. In the area of mathematics, G.R. was tested in the areas of applied problems, calculation, and number matrices (problem solving). Overall, he scored in the very-low range in mathematics. Corbett's report notes that G.R. demonstrated relative weaknesses in math problem solving, letter-word identification, and applied problems. Passage comprehension is noted to be a relative strength for him.

The educational evaluation includes instructional recommendations, including reading program and math and writing instruction recommendations. It also includes a summary of Corbett's findings, including what she determined to be G.R.'s relative strengths and weaknesses. Corbett testified that she could not recall whether the IEP team accepted her recommendations. She testified that she would normally not make program recommendations in her educational evaluation reports, and that programming is something that would be discussed with the CST, and is recommended through the IEP, not her report.

OT Evaluation

Fajardo administered an OT evaluation of G.R. as part of his triennial review, and prepared an OT re-evaluation report. (P-7.) She conducted the evaluation over the course of two therapy sessions, on March 12 and 19, 2019. She reported that G.R. was motivated to conduct the evaluation and that they had a good relationship. She had no concern regarding the accuracy of the assessment. G.R. was focused and on task during the assessment.

Fajardo has been an occupational therapist for thirty years, and was employed as an occupational therapist with the District from September 2004 through August 2020, where she provided OT to the District's special-education students, mostly in the autism classroom. She is now employed as an occupational therapist for an out-of-state school district. In 1992, Fajardo received a master's degree in OT with a pediatric/school-based concentration, and she holds a New Jersey School OT certificate, a National Board OT certification, and others. (P-12.)

Fajardo first started working with G.R. when he was a pre-kindergarten student. More recently, she provided individual OT services for G.R. twice per week, and group OT two or three times per week.

Fajardo's nine-page report contains a summary of her findings in the areas that she assessed: fine motor, handwriting, visual motor, sensory processing, and self-help. She testified as to the evaluation methods used to assess these areas, which are also identified in her report. She administered the fine motor assessment using the Bruininks-Oseretsky Test of Motor Proficiency Second Edition, Brief Form (BOT-2 Brief), through which he persevered, and the Assessment of Basic Language and Learning Skills (ABLLS) to assess fine motor skills. He scored well below the average range on the BOT-2 Brief, and Fajardo wrote that G.R. is likely to have difficulty keeping up with peers during fine motor activities and will require modifications to promote success. The results of the ABLLS were also included in the report, and Fajardo notes that G.R. demonstrated functional fine motor skills, as it was noted that he is able to write, copy, draw, color, cut, and handle small manipulatives given simple cues, demonstration, and extra time.

Fajardo's report also includes an assessment of G.R.'s handwriting, which she assessed using the Wold Sentence Copy Test and her own observations. She assessed the speed and accuracy of his writing. His speed and spacing were noted to be inadequate, but his formations of the letters were adequate, and his writing has actually improved in that he is able to maintain his words on the baseline and can write his full name with reassurance.

With respect to the visual-motor assessment, Fajardo utilized the Test of Visual Motor Skills 3rd Edition (TVMS-3), which is a pencil-and-paper task that requires a student to use writing skills to copy a series of designs. She testified that he put forth good effort but scored less than fair in this area. Fajardo notes in her report that despite this paper-and-pencil test, G.R. is able to complete many tasks such as coloring, dot-to-dots, cutting, lacing, and stringing. She notes in her report that his ability to cope with deviations is much improved, and that he works best and with focused attention when interested in getting something from the prize box.

With respect to sensory processing, Fajardo used "The Sensory Profile—Short Form," which provides information about a child's sensory processing abilities and a measure of the effect of those abilities on functional performance of daily-living skills. To complete this portion of the evaluation, she obtained the parent's assessment, and referred to her years of working with G.R. Fajardo noted that this was an area of deficit, and her report confirms that sensory processing and self-regulation skills are areas of concern. She notes in her report that G.R. demonstrates definite differences in how he processes sensory information as compared to others, which is consistent with the diagnosis of autism spectrum disorder.

Finally, G.R. was assessed in the area of self-help skills. For this assessment, respondent was asked to complete the "OT Activities of Daily Living Checklist," and Fajardo conducted therapeutic observations. In the report, Fajardo identifies his progress and weaknesses in the areas of self-dressing skills and self-feeding skills, and she references information that was shared with G.R.'s physician at St. Joseph's Children's Hospital Feeding Clinic. She notes in her report that a comprehensive feeding

assessment is being requested to better inform how to continue to progress and to collaborate with the physician as needed. She also notes the parent's request in this area. Fajardo testified that there was a history of feeding concerns with G.R. that were addressed by the team and with outside collaborators from St. Joseph's Children's Hospital Feeding Clinic, and that there was ongoing collaboration with the parent and team with respect to feeding issues.

Fajardo testified credibly that she provided information regarding all aspects of G.R.'s sensory information and needs, and that G.R. had a strong sensory diet in school. She also testified credibly that she provided a thorough assessment and therapeutic plan for G.R. and that more testing was not needed.

In response to respondent's questioning as to why her report did not include a program recommendation for G.R., Fajardo testified that she does not make program recommendations in her OT evaluation. Rather, she presented her evaluation and findings to the IEP team in order to offer OT recommendations. These were discussed at the IEP meeting and considered when discussing programming and developing appropriate goals and objectives.

Fajardo appeared very well aware of G.R.'s OT needs, including his self-regulation difficulties, which were being managed with a sensory diet.

FBA

Habermas conducted an FBA of G.R. as part of his triennial review on or around March 31, 2019, and she authored a report. (P-8.) The FBA was recommended due to tantrum behavior that included screaming, yelling, self-injury, and cursing.

Habermas has been employed as a board-certified behavior analyst (BCBA) with the District since March 2018. Her duties include completing all skills assessments, including the ABLLS-Revised, the Assessment of Functional Living Skills, and the Verbal Behavior Milestones Assessment and Placement Program, and conducting FBAs and creating subsequent behavior intervention plans (BIPs). She has a master's degree in

applied behavior analysis (ABA) with an emphasis in autism. She has approximately sixteen years of experience in ABA and providing services to students on the autism spectrum. Habermas was accepted as an expert in behavioral analysis for students on the autism spectrum.

Habermas explained that an FBA is an assessment that uses a series of processes to gather information surrounding a problematic or undesired behavior to arrive at a hypothesis as to the cause, and also the result in order to then develop a behavior plan. She testified that as part of her assessment, she was focused on examining and understanding G.R.'s problem behavior. She first identified the target behavior as tantrums, and defined it in observable terms, which could include any instance of crying, screaming, yelling, falling to the floor, eloping from the area, aggression towards others, hitting himself, and throwing and breaking items.

Habermas then developed a data-collection procedure. She reviewed background information on G.R., including his previous FBA/BIP, academic assessments, IEP, social history, and current neurological report. She then conducted indirect assessments through interviews with respondent and G.R.'s teacher, and she used a Motivation Assessment Scale,² the Functional Assessment Screening Tool,³ and Questions About Behavioral Function (QABF).⁴ "ABC data" was collected using ABC data sheets, and she relied on staff, who she testified are well versed in ABC data collection, to provide data. She observed G.B. on three separate occasions, including in his mainstream media/library class on March 11, 2019, and in his self-contained classroom on March 19 and 20, 2019. She observed him at different times of the day, and each observation was purposefully limited to less than sixty minutes.

² A sixteen-item questionnaire used to determine if the behavior is sensory in nature, and whether it serves an escape or attention-seeking function, or a tangible function.

³ An eighteen-item screening tool that identifies factors that might influence the occurrence of the target behavior, such as social reinforcement, escape from less preferred situations, sensory stimulation, or automatic reinforcement.

⁴ A twenty-five-item questionnaire that looks at the variables that might be maintaining the problem behavior, such as discomfort or illness.

With respect to Habermas' review of the prior FBA of 2017, she did not compare the data due to the different settings, teachers, and peers, which would render a comparison inappropriate and would not provide any useful information.

Habermas found that G.R.'s tantrum behavior serves multiple functions. The primary function appeared to her to be escape from demand and access to items/activities, with attention being a secondary function. She also found that results suggest that the consequences that maintain the tantrum behavior are escape/delay and attention. In response to her findings, Habermas made a number of recommendations. These include: (1) developing an individualized visual schedule of activities each day that make available choices and assist with transitions; (2) use of neutral tone of voice and calm body be modeled throughout the day; (3) reinforcers be identified via a preference assessment, and the most highly preferred reinforcers are made into a choice list or reward menu that is visible and accessible to G.R.; (4) social stories to discuss topics that are difficult for G.R.; and (5) BIP to reduce the frequency and duration of tantrum behavior and increase appropriate alternative behavior.

The resulting FBA report was provided to respondent and reviewed at the IEP meeting. It was meant to collect information surrounding G.R.'s behavior and to find a function. The report does not recommend training, and Habermas testified credibly that training is not something that should be included in an FBA, but that it may be included in a BIP.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

A parent may request an independent evaluation if there is a disagreement with the evaluation provided by a district board of education. N.J.A.C. 6A:14-2.5(c). Evaluations are defined as procedures used "to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." 34 C.F.R. § 300.15 (2020). An IEE is "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 C.F.R. § 300.502(a)(3)(i) (2020); see also N.J.A.C. 1:6A-14.4(a). If a school district denies a parent's request for an IEE, it must file for due process to request

a hearing to show that its evaluation is appropriate. The ALJ may order the IEE for good cause after giving the parties an opportunity to be heard. N.J.A.C. 1:6A-14.4(a). To determine whether there is good cause, the district must show that its evaluation was appropriate. 34 C.F.R. § 300.502(b)(2)(i) (2020).

It is undisputed that the District timely filed a request for a due-process hearing challenging the parent's request for an educational IEE, OT IEE and FBA IEE. The first issue to be decided here is whether the independent FBA requested by the parent should be denied because, as the District maintains, FBAs do not qualify as an evaluation for purposes of an IEE request. The second issue to be decided is whether the District has proven, by a preponderance of the credible evidence, that its evaluations were complete and appropriate.

Was the FBA an evaluation for which the parent may request an IEE?

The District maintains that, as a matter of law, an FBA does not qualify as an evaluation for purposes of an IEE request. To support its position, the District cites to a recent Second Circuit case, D.S. v. Trumbull Bd. of Educ., 975 F.3d 152 (2d Cir. 2020), in which the Second Circuit held that an FBA of a student did not constitute an "evaluation" under the IDEA, 20 U.S.C.S. § 1414(a)(1), (2). Since the court did not consider the FBA, "standing alone," an initial evaluation or a re-evaluation because it was not a "comprehensive assessment of a child's disability" but a purposefully targeted examination of the child's behavior, it determined that the parents did not have a right to an IEE at public expense based on their disagreement with the FBA. D.S. v. Trumbull, 975 F.3d at 163.

While neither the IDEA nor our implementing regulations articulate precisely what constitutes an "evaluation" for which an IEE may be requested by a parent, neither the Third Circuit, nor any New Jersey court, has concluded that an FBA is not an evaluation. In fact, the U.S. Department of Education has issued at least two policy letters in which it endorses the conclusion that FBAs are evaluations for purposes of triggering the right to an IEE, and the New Jersey Office of Administrative Law has historically viewed FBAs as

one type of evaluation for which a parent may request an IEE.⁵ Moreover, this case is distinguishable from D.S. v. Trumbull because here the FBA was conducted by the District as part of G.R.'s re-evaluation. In Trumbull, the child underwent a comprehensive re-evaluation in October 2014, he was scheduled for his next re-evaluation in October 2017, and the district conducted an FBA in March 2017. The FBA conducted in March 2017 was not part of an initial evaluation or re-evaluation. Rather, the District had voluntarily agreed to conduct an FBA of the child in the spring of each year, and it was after it conducted the annual FBA in March 2017 that the parents challenged the appropriateness of all evaluations conducted to date, including the March 2017 FBA, which was not part of the 2014 re-evaluation. Unlike here, the FBA in Trumbull was conducted as a "stand alone" assessment, and not part of a comprehensive triennial review. Since the FBA here was one of several assessments, or evaluations, that formed part of G.R.'s triennial re-evaluation, and the IEE was requested following the re-evaluation with which the parent disagrees, the parent's right to seek an IEE was properly triggered.

Were the OT and Educational Evaluations and FBA of G.R. appropriate?

Both the IDEA and New Jersey regulations include specific requirements for the evaluations, and re-evaluations, for disabled students. See 34 C.F.R. § 300.301 (2020), et seq.; N.J.A.C. 6A:14-2.5. N.J.A.C. 6A:14-2.5(a) provides:

In conducting an evaluation, each district board of education shall:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information . . . ;
2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and

⁵ The court in D.S. v. Trumbull references the USDOE 2000 and 2007 guidance letters but disagrees with the agency's guidance and asserts that it ignores the plain language of the governing statute and regulations. Id. at 166–67.

3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

Each district board of education must also ensure that any standardized tests that are administered have been validated and are administered by certain certified personnel; that the student is assessed in all areas of suspected disability; and that it provides assessment tools and strategies that directly assist in determining the educational needs of the student. N.J.A.C. 6A:14-2.5(b). The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. N.J.A.C. 6A:14-2.5(b)(7). Moreover, each evaluation must apply standards of validity, reliability, and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment; include, where appropriate, the use of standardized tests; and include a functional assessment of academic performance and, where appropriate, an FBA. N.J.A.C. 6A:14-3.4(f).

The results of each assessment must be memorialized in a written report, and each report must contain certain information, including:

1. An appraisal of the student's current functioning and an analysis of instructional implication(s) appropriate to the professional discipline of the evaluator;
2. A statement regarding relevant behavior of the student, either reported or observed, and the relationship of that behavior to the student's academic functioning;
3. If an assessment is not conducted under standard conditions, the extent to which it varied from standard conditions;

[N.J.A.C. 6A:14-3.4(h).]

At the hearing, the District presented its CST case manager and LDT-C, who conducted the educational evaluation. The District also presented the professional who conducted the OT evaluation, and the BCBA who conducted the FBA. These witnesses authored reports detailing their respective evaluations, and attended the October 9, 2019, eligibility/IEP meeting. I found their testimony to be detailed, credible, persuasive, and

reliable. All three District witnesses are trained and experienced professionals who were appropriately qualified in their respective areas of expertise. In fact, no evidence was presented challenging their qualifications.

The record establishes that as part of the triennial re-evaluation of G.R., nine separate evaluations were conducted, including the three at issue here. K.K. agreed to these re-evaluations, which were conducted between March 2019 and September 2019.

With respect to the OT evaluation conducted by Fajardo, the parent alleges that it did not address both sensory processing and feeding issues, nor did it recognize the impact of G.R.'s distractibility and focus. The OT evaluation, however, did address his sensory processing and development, including information relating to G.R.'s sensory diet and other means of assisting him with self-regulation. Regarding G.R.'s distractibility and/or focus, Fajardo noted that during the assessment (which took place over the course of two days), he demonstrated interest and was able to follow through with the testing items, and that she believed the re-evaluation to be an accurate account of his abilities. Fajardo had worked with him previously, evaluated him three years earlier, and was familiar with him. She collaborated with the St. Joseph's Feeding Clinic and Morristown Feeding Clinic to assist in G.R.'s feeding needs; she noted gains with self-feeding and acceptance of solid edibles and more novel foods and that an oral motor and behavioral program had been collaboratively implemented; and she noted that a comprehensive feeding assessment at St. Joseph's Children's Hospital Feeding Clinic was being requested. G.R. was, in fact, seen at St. Joseph's for an assessment in May 2019.

The evaluative criteria used by Fajardo included administration of the BOT-2 and the ABLLS to assess fine motor skills; the Wold Sentence Copy Test and observation to assess handwriting; the TVMS-3 and observation to assess visual motor skills; administration of the "Sensory Profile—Short Form" and observation to assess sensory processing; and "the OT Activities of Daily Living Checklist" completed by the parent to assess G.R.'s self-help skills. The validity of these assessment tools was not challenged here.

The parent challenges the educational evaluation because it provides results on the WJ-IV that are inconsistent with the results obtained from the TONI-4, and with the prior administration of the WIAT. The respondent's post-hearing brief asserts that the educational evaluator "only conducted one assessment that does not identify G.R.'s accurate academic levels." Corbett's educational evaluation consisted of her administration of the WJ-IV, Form A—Selected Tests of Achievement, Selected Tests of Oral Language, that she credibly testified was appropriate for this student. She also conducted a student observation, reviewed records, and considered input from the teacher and parent. The WJ-IV is a nationally recognized and validated standardized test of achievement that is regularly used by school districts. There is no evidence to suggest that the administration of the WJ-IV here was in any way inappropriate, and the respondent did not challenge Corbett's credentials or the manner in which she administered the assessment. While the parent may question Corbett's administration of only certain subtests of the WJ-IV, Corbett testified credibly that the subtests she administered were appropriate for G.R. given his ability and because these subtests would provide the information needed to determine continued eligibility.

With regard to the parent's challenge that the educational evaluation reports results on the WJ-IV that were inconsistent with the results obtained from the administration of the TONI-4 the following month, and the WIAT years earlier, inconsistent results on assessments do not render the assessments invalid or inappropriate. As Corbett testified, the purpose of her assessment was to explore whether a discrepancy exists that indicates a learning disability. Moreover, as Corbett explained, the WJ-IV was appropriate here because it is less "language heavy" than the WIAT, comparing the results of two separate instruments would be inappropriate, and the purpose of her evaluation was not to compare the results of the assessment conducted while G.R. was in preschool, but to identify current learning difficulties and determine whether a discrepancy exists.

The parent also asserts that the OT evaluation and the educational evaluation "failed to provide relevant information or strategies from which the parent could determine the effectiveness of G.R.'s program." She also appears to assert that these evaluations should have included program recommendations for G.R. However, there is nothing to

suggest that the evaluation reports are required to contain program recommendations, and both Corbett and Fajardo testified that they typically do not include program recommendations in their respective reports, but rather address programming with the CST. Moreover, despite the respondent's criticism, she did not even specify the type of "relevant information" that the evaluations failed to include that she asserts is needed or required. Based on my review of these evaluations and consideration of the testimony offered, the evaluations are comprehensive and comply with the requirements set forth in N.J.A.C. 6A:14-3.4 and N.J.A.C. 6A:14-2.5.

With respect to the FBA, in the post-hearing brief, the parent simply mentions that a BIP was not included in the October 2019 IEP, and the parent also appears to criticize the FBA for failing to include recommendations on programming, staffing, and training. The respondent, however, presented no law that requires, or evidence to suggest, that the FBA should have contained a BIP or recommendations for programming, staffing, or training. Habermas's FBA provides recommendations for a BIP in her March 31, 2019, report, and the BIP was developed following completion of the FBA report. As Habermas credibly testified, the purpose of the FBA was to collect information surrounding a particular behavior—G.R.'s tantrums—and to find a function, not to recommend staffing, training, or programming without consultation with the CST. The parent also appears to challenge the FBA for not including a comparison of the data collected by Habermas with the data collected in 2017. Again, it is questionable how that comparison would even be useful in addressing the student's current behavioral concerns, and Habermas credibly explained that such a comparison would be inappropriate given that two years had passed and that the sets of data were recorded with different variables.

The evidence demonstrates that the District's evaluations of G.R. were appropriate and complied with the requirements set forth in N.J.A.C. 6A:14-3.4 and N.J.A.C. 6A:14-2.5. The District conducted multi-disciplinary assessments that were geared to address the areas of suspected disability, and the assessments at issue here—OT, educational, and FBA—were sufficiently comprehensive to assess in the areas of suspected disability. The FBA, educational, and OT assessments were conducted by members of the CST who were appropriately qualified to conduct the assessments. These three evaluators utilized a variety of assessment tools during their evaluations, including standardized

assessments, informal assessments, and observations. They obtained information from G.R.'s teacher and parent, and student records were reviewed and considered. The evaluations also included the use of objective standardized tests that were individually administered, valid, and reliable.

Based upon a review of the totality of the evidence presented, I **CONCLUDE** that the District has established, by a preponderance of the credible evidence, that the District complied with all legal requirements for conducting the OT evaluation, the educational evaluation, and the FBA; that the evaluations it performed were appropriate and comprehensive; and that no additional evaluations are necessary or warranted. Accordingly, I further **CONCLUDE** that the parent's request for independent evaluations should be denied.

ORDER

Based on the foregoing, I hereby **ORDER** that the District's due-process petition be and hereby is **GRANTED** and that the parent's request for independent evaluations be and hereby is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2020) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2020). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.

July 12, 2021
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

jb

APPENDIX

LIST OF WITNESSES

For Petitioner:

Mayra Fajardo
Lindsay Corbett
Lauren Habermas

For Respondent:

K.K.

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Not in evidence
P-2 Not in evidence
P-3 Not in evidence
P-4 OT evaluation by Fajardo, dated May 4, 2016
P-5 Not in evidence
P-6 Educational evaluation by Corbett, March 2019
P-7 OT evaluation by Fajardo, March 2019
P-8 FBA evaluation by Habermas, dated March 31, 2019
P-9 Feeding follow up by Peggy Eicher, M.D., dated May 12, 2019
P-10 Not in evidence
P-11 Curriculum Vitae of Lindsay Corbett
P-12 Curriculum Vitae of Mayra Fajardo
P-13 Curriculum Vitae of Lauren Habermas

For Respondent:

None