

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**PAULDING COUNTY SCHOOL  
DISTRICT,**

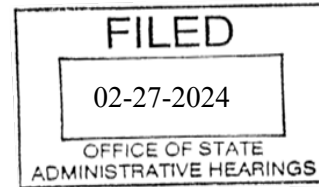
**Petitioners,**

**v.**

**██████████ BY AND THROUGH ██████████  
Respondent.**

**Docket No.:** ██████████  
██████████ OSAH-DOE-IEE-110-Barnes

**Agency Reference No.:** ██████████



**FINAL DECISION**

**I. INTRODUCTION**

██████████ (Respondent) is a student in Paulding County School District (Petitioner). On November 28, 2023, the District filed a Due Process Hearing Request contending that its psychoeducational evaluation conducted by Nicole Kaiser in September and October 2023 was appropriate and met the requirements under the IDEA such that the District should not be required to fund, at public expense, an Independent Educational Evaluation requested by Respondents. A hearing was held on January 29, 2024, at the Office of State Administrative Hearings. Tom Cable, Esq., represented the District; ██████████'s parents, ██████████ and ██████████ appeared on his behalf.

After careful consideration of the evidence, and for the reasons set forth below, the Court concludes that the District's evaluation met the requirements of the IDEA. Accordingly, the District is not required to fund an Independent Educational Evaluation at public expense. However, this decision does not preclude Respondents from obtaining an Independent Educational Evaluation at their own expense.

## II. FINDINGS OF FACT

1. Respondent [REDACTED] was born on May 9, 2015; at the time of the hearing, he was eight years old. He is currently a third grader at [REDACTED] Elementary School, which is located within Paulding County School District. (Joint Exhibit 1; OSAH Form 1).
2. [REDACTED] was diagnosed with ADHD in September 2022, when he was in second grade. However, he did not receive a 504 plan or an Individualized Educational Program (IEP) as a result of that diagnosis. Despite his ADHD, school records show that [REDACTED] has historically performed well academically. In December 2022, [REDACTED] was determined eligible for the “Venture” program, which is the District’s gifted program. Eligibility is based on standardized test scores. Regarding [REDACTED]’s behavior, his current teachers have not reported any significant problems. His third-grade teacher, Britney Vartenisian, reports that [REDACTED]’s classroom behavior is within the normal range compared to other third-grade boys, and that while he needs redirection from time to time, she finds that he has a pleasant attitude, shows a willingness to learn, and responds well to requests. Similarly, one of [REDACTED]’s Venture teachers, Carrie Reuss, described [REDACTED] as “cooperative” and “pleasant,” while acknowledging that he can be impulsive and inattentive at times. Again, she reports that he responds well to redirection. Also, allowing [REDACTED] to stand up and walk around the classroom when he gets fidgety helps with his behavior. (Joint Exhibits 1, 2, 3, and 4; Testimony of Britney Vartenisian; Testimony of Carrie Reuss).
3. In August 2023, at the beginning of [REDACTED]’s third-grade year, his parents, [REDACTED] and [REDACTED] had a meeting with school personnel where they expressed concern about feedback they had received concerning [REDACTED]’s behavior during the previous school year. They also reported that [REDACTED] had been exhibiting problematic behavior at home. The parents reported no concerns regarding [REDACTED]’s academic performance at this meeting. [REDACTED]’s parents requested a psychoeducational evaluation in

order to determine whether [REDACTED] was eligible for an Individualized Education Program (IEP). As a result of the meeting, Ms. Vartenisian began to implement a “behavior chart” that tracks [REDACTED]’s ability to stay on task, follow directions, and not talk out of turn. (Joint Exhibit 1; Testimony of Nicole Kaiser; Testimony of Britney Vartenisian ).

4. Nicole Kaiser has been a school psychologist for 27 years, and has been working for the District for 26 years. She has conducted over 1,000 evaluations in her career as a school psychologist. She holds a bachelor’s degree in psychology, a Master’s degree in School Psychometry, and a Specialist degree in School Psychology. In September and October 2023, Ms. Kaiser conducted a psychoeducational evaluation of [REDACTED] on behalf of the District. (Testimony of Nicole Kaiser; Joint Exhibit 1, Petitioner’s Exhibit 3).
5. As part of her evaluation process, Ms. Kaiser considered [REDACTED]’s ADHD diagnosis, which was provided by his physician in September 2022, when his parents had brought [REDACTED] to the doctor with concerns about his impulsivity. She also reviewed an evaluation by Dr. Asia Gifford, Psy.D., completed in April 2023, which indicated intellectual functioning in the average range, but also issues with impulsive behaviors and hyperactivity. (Testimony of Nicole Kaiser; Joint Exhibit 1).
6. As part of her evaluation, Ms. Kaiser administered the Wechsler 5 Intelligence Scale for Children-Fifth Edition (WISC-V), the results of which were as follows:
  - Full Scale Intelligence – Above Average
  - Verbal Comprehension – Superior
  - Visual Spatial Processing – Average
  - Fluid Reasoning – High Average
  - Working Memory – Superior
  - Processing Speed – Average

Ms. Kaiser noted that [REDACTED] appeared to have “very strong” cognitive abilities. Even though he scored “average” in visual spatial processing and processing speed, Ms. Kaiser believed that, compared to his other skills, these areas were “personal weaknesses” for [REDACTED] (Joint Exhibit 1; Testimony of Ms. Kaiser).

7. Next, Ms. Kaiser administered the Wechsler Individual Achievement Test-Fourth Edition (WIAT-4).

The results were as follows:

- Reading:
  - i. Word Reading – Superior
  - ii. Oral Reading Fluency – Superior
  - iii. Reading Comprehension – Above Average
- Math
  - i. Math Problem Solving – Average
  - ii. Numerical Operations – Average
- Writing
  - i. Sentence Composition – Average
    - 1. Sentence Building – Low Average
    - 2. Sentence Combining – High Average
- Listening Comprehension
  - i. Receptive Vocabulary – Average
- Oral Comprehension
  - i. Expressive Vocabulary – High Average

Ms. Kaiser’s conclusion was that [REDACTED] overall had average academic abilities, with superior skills in reading. She did note that during the “Sentence Building” subtest, [REDACTED] had trouble generating sentences for two words in a row. As a result, that subtest was discontinued. After Ms. Kaiser had scored this section and saw the low sentence building score, she decided to go back and administer another subtest, sentence combining, because that score was inconsistent with [REDACTED]’s performance throughout the rest of the evaluation. He did far better on the sentence combining subtest. Ms. Kaiser also noted in her report that [REDACTED] occasionally made errors in punctuation and capitalization, “often

capitalizing words in the middle of sentences and failing to add end punctuation” during the sentence building subtest. She testified that his punctuation and handwriting improved during the sentence combining subtest. (Joint Exhibit 1; Testimony of Nicole Kaiser).

8. Finally, Ms. Kaiser used the Behavior Assessment System for Children – Third Edition (BASC-3), which is a questionnaire that examines a child’s behavior in different environments. ██████’s mother, ██████ his general education teacher, Ms. Vartenisian; and his two Venture teachers,<sup>1</sup> Ms. Reuss and Ms. Bentley, each completed the BASC-3 questionnaire. Ms. Kaiser reported that ██████’s answers indicated that ██████ “displays average overall social, emotional, behavioral, and adaptive functioning,” but that he received at-risk scores in the areas of “Hyperactivity” and “Conduct Problems.” None of the teacher responses resulted in elevated scores; however, all teachers reported issues with ██████ being off-task and impulsive. (Joint Exhibit 1; Testimony of Nicole Kaiser).
9. Ms. Kaiser explained that for each subtest that she administered to ██████ the test has “ceiling rules,” where once a child misses a certain number of questions the examiner stops asking questions from that section (the exact number varies from test to test). This is why, after ██████ declined to form sentences on two items in a row on the sentence building subtest, Ms. Kaiser stopped administering that section. This does not mean that he did not “complete,” this subsection, but that it was administered as intended. (Testimony of Nicole Kaiser; Testimony of Samuel Sabaka).
10. Based on her evaluation, Ms. Kaiser concluded that ██████ performed average academically overall compared to his peers, but with superior skills in reading. She did not note any areas of significant concern. (Testimony of Nicole Kaiser; Joint Exhibit 1).
11. Ms. Kaiser did not use any single measure or assessment as the sole criterion for determining whether ██████ is a child with a disability. She used technically sound, widely used instruments and

---

<sup>1</sup> ██████’s two Venture teachers, Ms. Reuss and Ms. Bentley, completed the questionnaire together and submitted their responses jointly. (Testimony of Nicole Kaiser; Testimony of Carrie Reuss).

administered them in accordance with the assessments' instructions. She selected the assessments in a manner so as not to be discriminatory on a racial or cultural basis. Ms. Kaiser provided and administered the assessments in English, [REDACTED]'s primary language. Her evaluation assessed all areas of suspected disability. (Testimony of Nicole Kaiser; Testimony of Samuel Sabaka).

12. Dr. Samuel Sabaka is the psychological services coordinator for the District and Ms. Kaiser's supervisor. He reviewed her psychoeducational evaluation according to standards contained in the IDEA. He found that Ms. Kaiser's evaluation report adequately addressed the referral concerns, contained internally consistent results, and was sufficiently comprehensive. (Testimony of Samuel Sabaka).

13. After Ms. Kaiser completed her report, a special education eligibility meeting was held on November 2, 2023. Participants included Ms. Kaiser; Tina Evans, [REDACTED] Elementary's lead special education teacher; Beth Jokich, another special education teacher; Ms. Vartenisian; [REDACTED] and [REDACTED] Carrie Reuss and April Bentley, [REDACTED]'s Venture teachers; and Betty Nell Gasset, the assistant principal. The team reviewed the results of Ms. Kaiser's evaluation, which did not display any significant concerns. Ms. Vartenisian reported that [REDACTED]'s behavior chart had been extremely successful. She also noted that he did not demonstrate any academic weaknesses, although writing was not his favorite subject. His Venture teachers also reported that he did very well in their class, and that although he sometimes gets off-task, he is easily redirected. [REDACTED] asked about the issues with punctuation that were noted in the psychoeducational report. Ms. Vartenisian explained that [REDACTED] understands correct punctuation but sometimes rushes through his assignments. [REDACTED]'s parents were told these sorts of issues are "developmentally appropriate." [REDACTED] also noted concerns about [REDACTED]'s handwriting, and Ms. Vartenisian agreed to allow him to type some of his assignments. [REDACTED]'s teachers agreed that while he displays issues with impulsivity, they are in line with other

children his age and do not interfere with his academic performance. (Petitioner's Exhibit 1; Testimony of Britney Vartenisian; Testimony of Carrie Reuss; Testimony of Nicole Kaiser).

14. The team concluded that, given [REDACTED]'s success with the interventions that had been implemented in the classroom (i.e., the behavior chart), he did not require specialized instruction at that time. However, they did agree that he could benefit from a 504 plan, which only provides accommodations, as opposed to specialized instruction. [REDACTED] and [REDACTED] stated that they did not want to implement a 504 plan until they had time to discuss it among themselves. (Petitioner's Exhibit 1; Testimony of Britney Vartenisian; Testimony of Carrie Reuss; Testimony of Nicole Kaiser).
15. A week after the eligibility meeting, [REDACTED] emailed Ms. Kaiser and repeated her concerns about [REDACTED]'s handwriting and punctuation, stating that she "would like [Ms. Kaiser's] assistance in obtaining an additional evaluation to explore his written expression skills and why he is scoring so poorly." Ms. Kaiser responded, explaining that for a student to be eligible for special education services related to a Specific Learning Disability, the child would have to be "unable to make progress toward grade level standards without specialized instruction." She explained that while [REDACTED]'s scores in writing were lower than his scores in other areas, they were still average compared to his same-age peers, and therefore he did not meet those requirements. (Testimony of Nicole Kaiser; Respondent's Exhibit 2).
16. While Ms. Vartenisian does not believe that [REDACTED]'s handwriting and punctuation is too far off compared to other third graders', she does acknowledge that it could use improvement. In response to his parents' concerns, she has spent more time this school year working with [REDACTED] individually on his writing. She says she has come up with a "writing checklist" that stays on his desk that he uses to edit his writing assignments; this helps him double check that his punctuation, capitalization, and spelling are correct. She reports that his performance improves when he uses the checklist. She also

has been working with him on his handwriting, and testified that in just the two weeks prior to the hearing his penmanship had improved greatly. (Testimony of Britney Vartenisian).

17. [REDACTED] Elementary uses “standards-based” grading, in which each academic subject is divided into sub standards, and students are assigned grades from 1 to 4. During the 2023-2024 school year’s second term, the most recent one for which grades were available at the time of the hearing, [REDACTED] was receiving all 3’s in writing, meaning he “demonstrates mastery” in those areas. During the first term, he did receive one 2 in writing, meaning he was “progressing towards mastery” in that area. Ms. Vartenisian said it was common for students to receive 2’s at the beginning of the school year, and that he was still passing Writing during that term. (Testimony of Britney Vartenisian; Joint Exhibit 2).
18. [REDACTED] and [REDACTED] requested an Independent Educational Evaluation (IEE) at public expense on November 16, 2023. A parent may request an IEE at public expense when he or she disagrees with the results of a school’s evaluation. If the request is granted, the parent can have their child evaluated privately and the District would pay for the evaluation. Parents may also have their child evaluated privately on their own, and then seek reimbursement from the school after the evaluation is completed. Amy Penn is the senior executive director for special education for the district and the person who makes the final decision as to whether the District grants an IEE. Ms. Penn testified that the District typically grants parents’ request for an IEE. To determine whether to grant such a request, she looks to the standards contained in the IDEA. In [REDACTED]’s case, she evaluated Ms. Kaiser’s psychoeducational report and his educational and disciplinary records, and spoke with his teachers. She concluded that Ms. Kaiser’s evaluation complied with the standard set in the IDEA—it was comprehensive, addressed all areas of concern, and used multiple properly-administered measures. She also noted that the greater amount of time that had lapsed between an evaluation and an IEE



request, the more likely she was to grant the request, because a student's performance could change over time. In this case, because the request came so soon after the evaluation, she did not believe it was likely that [REDACTED]'s profile would have changed. Therefore, the District denied the request for an IEE of [REDACTED] at public expense. (Testimony of Amy Penn; Joint Exhibit 1; OSAH Form 1).

19. [REDACTED] and [REDACTED] had [REDACTED] evaluated privately in December 2023. However, the evaluator did not testify at the hearing.

### III. CONCLUSIONS OF LAW

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school, subject to certain conditions. 20 U.S.C. § 1415(d)(2)(A); 34 C.F.R. § 300.502(b)(1). When a parent requests an independent educational evaluation at public expense, the school has the right to file a due process complaint to request a hearing to show that its evaluation is appropriate. 34 C.F.R. § 300.502(b)(2)(i). If the school files a due process complaint to request a hearing, and the final decision is that the school's evaluation is appropriate, the parent has the right to an independent educational evaluation, but *not* at public expense. 34 C.F.R. § 300.502(b)(3).
2. In determining whether a school's evaluation is appropriate, IDEA requires that the school:
  - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining –
    - i. Whether the child is a child with a disability; and
    - ii. The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general educational curriculum;

- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(b)(1)-(3); Ga. Comp. R. & Regs. 160-4-7-.04(4)(b).

3. Additionally, the school must ensure that –

- (1) Assessments and other evaluation materials used to assess a child . . .
  - i. Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - ii. Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - iii. Are used for the purposes for which the assessments or measures are valid and reliable;
  - iv. Are administered by trained and knowledgeable personnel; and
  - v. Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered to as to best ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child’s aptitude or achievement level or whatever other factors the test

purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

- (4) 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;
- (5) Assessment of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible . . . , to ensure prompt completion of full evaluations.
- (6) In evaluating each child with a disability . . . , the evaluation is 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.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

20 U.S.C. §§ 1414(b)(1)-(3), 1412 (a)(6)(B); 34 C.F.R. § 300.304(c)(1)-(7); Ga. Comp. R. & Regs. 160-4-7-.04(4).

4. The Court concludes that Ms. Kaiser's evaluation met the requirements of the IDEA. She used a variety of technically sound tools and strategies to gather information regarding ██████'s academic, intellectual, social, and behavioral abilities. She evaluated the information she gathered based on her education, training, and experience. Although ██████ and ██████ disagree with Ms. Kaiser's conclusion that ██████ does not have a written expression disorder, Petitioner has met its burden to prove that the evaluation conducted by Ms. Kaiser met the requirements of the law such that Petitioner should not be obligated to fund an Independent Educational Evaluation.

#### IV. DECISION

The sole issue before this court is whether the evaluation conducted by Ms. Kaiser is appropriate and met the requirements under the IDEA such that the District should not be required to fund an Independent Educational Evaluation at public expense. This case does not address whether [REDACTED] is eligible to receive special education services. Based on the foregoing Findings of Fact and Conclusions of Law, the District's request that the Court conclude that the September and October 2023 evaluation was appropriate and that the District should not be required to fund an independent educational evaluation at public expense is **GRANTED**. Nothing in this decision precludes Respondents from obtaining additional IEEs at their own expense.

**SO ORDERED**, this 27th day of February, 2024.

  
\_\_\_\_\_  
**Shakara M. Barnes**  
**Administrative Law Judge**

