

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Docket No.: 18-023634**

**Traverse City Area Public Schools,  
Petitioner**

**Case No.: 18-00089**

**v**

**Agency: Education**

**L.G. & S.B. o/b/o J.B.,  
Respondent**

**Case Type: ED Sp Ed Regular**

**Filing Type: Appeal**

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**Issued and entered  
this 8<sup>th</sup> day of April 2019  
by: Michael J. St. John  
Administrative Law Judge**

**DECISION AND ORDER**

**PROCEDURAL HISTORY**

On December 10, 2018, Traverse City Area Public Schools (Petitioner) filed a Due Process Hearing Request under the Individuals with Disabilities Education Act (IDEA), 25 United States Code (USC) 1400 *et seq.* with the Michigan Department of Education (MDE), in order to show that its evaluation of J.B.<sup>1</sup> (Student) were appropriate. This Due Process Complaint was forwarded to the Michigan Administrative Hearing System (MAHS) for hearing on January 22, 2019 and was assigned to Administrative Law Judge (ALJ) Michael J. St. John.

On January 30, 2019, the telephone prehearing conference commenced as scheduled. Both the Petitioner and Respondent agreed to all the dates and timelines discussed at the prehearing conference and memorialized in the February 5, 2019 Order Following Prehearing Conference and Notice of Hearing.

On February 28, 2019, Petitioner timely filed their Exhibit and Witness Lists. The Respondent never filed either an Exhibit List or a Witness List.

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<sup>1</sup> Student will be used in place of child's name to protect the minor child's identity.

On March 12, 2019 at 12:00 p.m. (noon), the previously-agreed upon and scheduled time, the Final Prehearing Conference was held. The Petitioner's attorney appeared. The Respondent failed to appear and failed to respond to a message that the Administrative Law Judge left on L.G.'s voicemail. The Petitioner represented that the Respondent had failed to respond to the Petitioner's numerous communication attempts to resolve the matter short of a hearing.

Pursuant to the March 12, 2019 Order Following Final Prehearing Conference and Notice of Hearing, the parties were notified that they could participate either in person at the hearing location or remotely via telephone and were provided with the telephone number to call in.

On March 14, 2019, the hearing was convened as scheduled. The undersigned presided. Attorney at law Jeffrey J. Butler appeared on behalf of Petitioner. Neither Respondent, nor an attorney nor other representative, appeared on the Respondent's behalf. The Administrative Law Judge's office has not received any documentation or communication from Respondent requesting an adjournment of the hearing. Respondent 1) had actual notice of the hearing dates at the initial telephone prehearing conference where L.G. participated and agreed to the hearing dates, 2) was properly served with notice of these proceedings at both their mailing address and email address, 3) was contacted by telephone by the undersigned Administrative Law Judge on March 12, 2019 to participate in the Final Prehearing Conference, and 4) emailed the March 12, 2019 Order which again set forth the hearing date, location, and options for participating in the hearing either in person or remotely. Respondent had notice of the hearing and chose not to participate.

Pursuant to Section 72(1) and 78(2) of the Administrative Procedures Act (APA) and Rule 134 of the Administrative Hearing Rules for MAHS the hearing proceeded in the absence of the Respondent. The hearing concluded on March 14, 2019.

### **EXHIBITS**

The Petitioner offered the following Exhibits (numbers) which were admitted without objection:

1. November 18, 2017 IEP with email correspondence regarding the IEP
2. November 18, 2018 MET Cover Page
3. November 17, 2018 MET Recommendation
4. December 7, 2016 New Enrollment in Special Education Form
5. November 18, 2017 Notice/Offer of FAPE
7. December 7, 2016 Prior Written Notice

8. February 3, 2017 Prior Written Notice
9. September 27, 2017 Prior Written Notice
11. September 5, 2018 Prior Written Notice
12. September 11, 2018 REED
13. September 24, 2018 REED
14. September 29, 2017 REED
15. November 1, 2017 Multidisciplinary Evaluation Report
16. November 11, 2017 MET Report
17. Section 504 Plan
18. February 2, 2017 Revocation of Parental Consent for Special Education Programs and Services
20. Emails regarding November 2018 IEP Parental Consent
21. Student's Exposures to Voices Log
22. Assistive Technology Consultation Log
23. Assistive Technology Phone Log
24. Student's Use of Tools Log

The Petitioner did not offer Exhibits 5, 10, 19, 25, 26, or 27.

The Respondent, having not appeared at the hearing, did not offer any exhibits into the record.

Following the conclusion of the hearing the record was closed. Without objection, the hearing deadline was extended to April 30, 2019. No post-hearing briefs were permitted. The record closed at the conclusion of the hearing.

### **ISSUES**

- A. Were the evaluations performed by the Petitioner adequate?
- B. Should an Independent Educational Evaluation be ordered at public expense?

**APPLICABLE LAW**

The Code of Federal Regulations, 34 CFR § 300.502, regarding independent educational evaluations, states the following in pertinent part:

(a) *General.*

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this subpart –
  - (i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and
  - (ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) *Parent right to evaluation at public expense.*

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.
- (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either-
  - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
  - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

- (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
- (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Additionally, 34 CFR § 300.304, evaluation procedures, addresses how a public agency must conduct an evaluation, as follows:

\* \* \*

- (b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—
  - (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 under § 300.8; 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 education curriculum (or for a preschool child, to participate in appropriate activities);
  - (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.

(c) *Other evaluation procedures.* Each public agency must ensure that—

- (1) Assessments and other evaluation materials used to assess a child under this part—
  - (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 so as best to 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) Assessments 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, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

- (6) In evaluating each child with a disability under §§ 300.304 through 300.306, 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.

### **FINDINGS OF FACT**

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

#### **Terry Smith, Traverse City West Middle School Principal**

1. Mr. Smith has been employed as the Building Principal at Traverse City West Middle School for four years. He has been employed by Traverse City Public Schools for a total of 19 years including time as building principal, math teacher, and special education school teacher. He has a B.S. in business administration, a M.S. in marketing and management and a teaching certificate with a major in math and social studies. He also has a master's degree in education and curriculum.
2. Mr. Smith provides support to special education students including as a district representative for students' IEPs as needed.
3. The Student first enrolled in the Petitioner district in December of 2016 (Exhibits 4 and 7), as a 7<sup>th</sup> grader for the 2016-2017 school year.
4. When the Student first enrolled there was no IEP performed because the parents refused special education services. The Petitioner district made several invitations to conduct an IEP but the parents revoked consent for the Petitioner district to provide special education services on February 2, 2017 (Exhibit 18).
5. Special education services ended for the Student on February 3, 2017 as a result of the parents' refusal to participate in the process.
6. Following their refusal of special education services, the parents requested a Section 504 plan for the Student which the Petitioner district provided (Exhibit 17).

7. Mr. Smith described assistive technology as an accommodation to allow a student to access the curriculum.
8. Assistive technology was provided to the Student as part of the Student's 504 plan (Exhibit 17).
9. Mr. Smith and Ms. Zell provided assistive technology to the Student through the Student's 504 plan.
10. Mr. Smith and his staff followed Ms. Zell's recommendations for assistive technology for the Student and provided those assistive technologies ("books available through Audible and Book share on student's chromebook" and "access to text to speech or another accessible platform for books used in the curriculum e.g. read to him, book on tape, audible – not a robot voice") to the Student. These were provided to the Student during the entire time the Student was at West Middle School.
11. Mr. Smith has staff monitor the Student's use of assistive technology at West Middle School.
12. L.G. indicated some concerns with the voice doing the speaking to the Student. L.G. indicated a desire to have Dragon Naturally Speaking. The Petitioner District did not provide that software because the software provided was working as assessed by the Petitioner District.
13. The Student was high achieving and never failed a course at West Middle School – he received grades of A's and B's. Mr. Smith believes that this is indicative of supports that were effective.
14. Mr. Smith believes that the 504 plan was consistently implemented throughout both the Student's 7<sup>th</sup> and 8<sup>th</sup> grade years.
15. The parent(s) requested another special education evaluation in September of 2017. A Review of Existing Evaluation Data (REED) meeting was held on Friday, September 29, 2017 (Exhibit 14) which resulted in a Multidisciplinary Evaluation Report (Exhibit 15).
16. The Student is eligible for special education with a specific learning disability in basic reading skill, reading comprehension, reading fluency, and written expression.
17. In the initial (November 8, 2017) IEP, the Student was offered "Directions, Grading, Handwriting, Assignments, Tests, Books, etc. Options to have tests on audio/read aloud, Access to text-to-speech and/or audio books."
18. Staff had access to Ms. Zell to assist with the Student using the text-to-speech.
19. At times the Student would not use the text-to-speech technologies. When this occurred, Ms. Zell would work with the Student on better using the technologies. The Student's difficulty with the text-to-speech technologies were due to the Student's lack of motivation rather than difficulty with the technologies.



20. The Petitioner District was ready, willing, and able to implement the November 8, 2017 IEP (Exhibit 5) but was unable to do so because the parent(s) were unwilling to sign the IEP and provide consent to provide special education services. The Petitioner District is unable to provide special education services without parental consent to do so.

Megan Zell, Assistive Technology Consultant for Traverse Bay Area Intermediate School District (TBAISD)

21. Ms. Zell has had her position for the last 11 years and has worked for the TBAISD for 13 years (working for the first two years as an occupational therapist). Ms. Zell has a B.A. in exercise and health science and a M.S. in occupational therapy. Ms. Zell also did a six week additional internship with the National Institute for Health. Ms. Zell is a registered occupational therapist licensed in the State of Michigan. Ms. Zell works to help students access the curriculum.
22. Assistive Technology Consultants are usually occupational or speech therapists but there are no specific qualifications, training, or licensing required for the positions. Ms. Zell has been exposed to the field since graduate school and has received ongoing training for the last 25 plus years in the field.
23. When determining whether a student needs assistive technology, Ms. Zell uses the SETT (Student, Environments, Tasks, and Tools) framework developed by Joy Zabala with whom Ms. Zell worked during one of her internships.
24. Ms. Zell first became involved in the Student's case in December of 2016 and has been involved in his case through the November 12, 2018 continued IEP when no assistive technology services were determined to be needed. (Exhibit 23).
25. Ms. Zell typically does not keep a separate phone log, but because there were so many phone calls in this case, she kept a separate phone log (Exhibit 24).
26. Ms. Zell has been involved in the Student's assistive technology throughout the Student's time with the Petitioner District. Any time a staff member has contacted Ms. Zell about the Student's assistive technology's needs, Ms. Zell has intervened and worked with the Student to address the instructor's/Student's/parent's concerns.
27. Although the parents revoked consent for the Student to receive special education services, Ms. Zell continued to provide assistive technology services through his 504 plan.
28. Ms. Zell and all the Petitioner District staff have implemented all the Student's 504 accommodations as set forth in Exhibit 17.
29. The parents desired the Student to use Dragon Naturally Speaking.
30. There are several (at least four) speech assistive devices available.
31. There is a free speech assistive device (speech to text) already available on the Student's chromebook that is roughly equivalent to the Dragon Naturally Speaking

for the Student. Ms. Zell recommended this program for the Student.

32. Ms. Zell noted that the Dragon Naturally Speaking program would not have been able to be used to implement the 504 plan for the text to speech portion because it would have resulted in a robotic voice and would not have been able to read some of the text.
33. Ms. Zell believes that because the Student does not have a speech impediment (and there is no need for the program to learn the Student's specific speech patterns), the chromebook program is more appropriate and less restrictive than Dragon Naturally Speaking.
34. The Student was not a consistent user of the assistive technology – he would often decline to speak in class. The Student told Ms. Zell that he preferred to handwrite short assignments, type during class, and speak into the computer at home.
35. The assistive technology has consistently been available to the Student. The Student has consistently shown an ability to utilize the assistive technology effectively, when he chooses to use the technology. Because the Student has not chosen to use the technology very frequently, it has not had a significant effect on his academic achievement.
36. Ms. Zell describes the Student was an A and B student in regular or honor level courses. She is unaware of the Student having failed any courses.
37. Ms. Zell is trained in administering the Protocol for Accommodations in Reading (PAR) assessment. Ms. Zell administered the PAR to the Student appropriately and received accurate results initially<sup>2</sup>.
38. Ms. Zell noted that the Student was able to use the assigned assistive technology with 93% to 100% accuracy, when the Student used the technology.
39. Ms. Zell believed that the decisions for special education students were made as part of a team with all data and team members' opinions considered.
40. Ms. Zell was part of the multidisciplinary evaluation team that performed the evaluation on November 1, 2018 (Exhibit 16) and is familiar with the team members and is comfortable with their respective qualifications.
41. The Petitioner District performed a REED on September 11, 2018 (Exhibit 12), discussed it with L.G., and then revised it based on L.G.'s input and prepared a revised REED (Exhibit 13).
42. Ms. Zell tried sixty-five (65) different voices for text-to-speech voices (Exhibit 21). The Student did not like most of them.

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<sup>2</sup> When Ms. Zell did additional testing the Student was fatigued or disinterested and did the test very quickly resulting in inaccurate results. However these were supplemental answers that did not affect the initial results.

43. The Student was able to dictate paragraphs with 100% accuracy using voice typing in google documents. In another attempt he was able to get 41 out of 44 words correct. (Exhibit 21).
44. Ms. Zell asked the Student's teachers to collect data about the Student's access to the curriculum. (Exhibit 22). The data shows that the tools were available to the Student but that the Student consistently did not want to use those tools.
45. Ms. Zell does not find the Student to be oppositional. Ms. Zell believes that the Student, if he needs a tool, likely would use that tool.

Andrew Wares, Assistant Principal Traverse City West Senior High School

46. Mr. Wares has been an Assistant Principal for Traverse City West Senior High School for five years and been with the Petitioner District for 18 years. He has been a coach, a focus room support person, long term substitute, and teacher before becoming a principal. He has bachelor's and master's degrees in teaching and educational administration respectively.
47. As an Assistant Principal, Mr. Wares is responsible for approximately 550 students, including the Student.
48. Traverse City West is consistently ranked as one of the top 20 high schools in the state of Michigan every year.
49. Prior to the start of the Student's high school career, at an August 2019 meeting with Mr. Wares, L.G. desired to and attempted to hand select each of the Student's teachers.
50. Mr. Wares believes that the Petitioner District has followed the Student's 504 plan (Exhibit 12). The Student has never come to Mr. Wares and indicated that there has been a denial of any accommodation.
51. Mr. Wares has had about five meetings with L.G. about her concerns with the Student.
52. Mr. Wares noted that the Student plays on the varsity hockey team as a freshman, one of four freshman on the approximately 25 player team.
53. The Student is an above average student academically without significant behavioral issues.
54. Although the Student has accommodations, the Student does not make significant use of his accommodations.

### CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. *Callaghan's Michigan Pleading and Practice* § 60.248, at 230 (2d ed. 1994). The burden of proof is upon Petitioner to prove by a preponderance of evidence that Petitioner's October 2018 evaluations of Student are appropriate. Proof by a preponderance of the evidence requires the trier of fact to determine that the evidence supporting the existence of a contested fact outweighs the evidence supporting its nonexistence. *Martucci v Detroit Police Commissioners*, 322 Mich 270; 33 NW2d 789 (1948).

The Petitioner has established, by a preponderance of the evidence at the hearing, that Petitioner's numerous evaluations of the Student were not only appropriate but went above and beyond what was required. All three witnesses who testified for the Petitioner were articulate, qualified, credible, and genuinely care about educating the Student despite L.G.'s interference in the process.

Both Mr. Smith and Mr. Wares presented as skilled administrators who described an entirely appropriate response by the Petitioner to the Respondent's repeated requests for testing and additional services. The administrators' testimony, as supported by the exhibits admitted into the record, show a school district that has done all that is required and quite a bit more than was required of them to provide the Student with a free appropriate public education.

Ms. Zell presented as a caring, compassionate, patient, and skilled provider of services to the Student. Ms. Zell presented more than fifty separate and distinct voices to the Student to attempt to find an appropriate computerized speaker for the Student to listen to. This is going above and beyond. Ms. Zell documented thirty-nine (39) separate contacts regarding the Student between September 14, 2016 and November 12, 2018 in fourteen pages of very detailed progress notes. Ms. Zell also logged nine (9) phone calls including three with L.G.

The Student "likes a natural voice reading better" than a computerized voice. (Exhibit 22). Ms. Zell reported in these detailed notes that the Student also repeatedly indicates that he doesn't really want the accommodations. The only person really pushing for these accommodations is L.G., the Student's mother. L.G. is also the only one pushing for the Dragon Naturally Speaking program even though there is no indication that the Student desires or would benefit from this program. The evidence presented at the hearing, to the contrary, shows that the Dragon Naturally Speaking program would be inappropriate and not in compliance with either the Student's 504 plan or proposed IEP.

The Student is doing well academically, and where there have been lapses it is due not

to the Petitioner's failure to identify or provide services but rather due to the Student's unwillingness/lack of need to use the accommodations and the Student's failure to turn in assigned work. "<Student> is failing ELA right now. Has ~12 assignments not turned in. <Teacher> reports that <Student> has not used text to speech and has not used video typing. <Student> is using Audible books ... [but not] on every occasion."

Based on the credible testimony and evidence presented by Petitioner, the undersigned finds that the multiple evaluations of Student to date have been more than sufficiently comprehensive and comport with all requirements as set forth in IDEA and MARSE. See 34 CFR §§ 300.304 and 502. Respondents presented no testimony or documents to refute Petitioner's overwhelming evidence that the evaluations of Student were appropriate. Based on the evidence presented at the hearing, the Administrative Law Judge has no earthly idea what the Respondent believes might be deficient since the evaluations here were very thorough and appropriate. Unfortunately, despite being repeatedly given every opportunity to do so, the Respondent failed to participate in the hearing to describe what the alleged insufficiencies are.

The Student seems to be doing quite well in his academics in the Petitioner's school district. Any deficiencies seem to be a result of the Student not wanting the accommodations or failing to timely turn in all required work. The former is entirely normal, particularly for a then-middle school student who likely wants nothing more than to fit in with classmates. The accommodations, and particularly the accommodations refused by the Student, all take away from that opportunity since they require him to speak into the computer or be read to either in class in front of peers or taken out of the classroom into the hall away from peers.

L.G.'s repeated demands for services and then subsequent denials of authorizations for those services is most disturbing. The record is full of examples of the Respondent (and L.G. in particular) withdrawing consent for what she believes are needed services because those services are not being provided in precisely the way that she desires. This is not helpful to the Student's education. Although examples are present in multiple locations in the hearing record (multiple meetings with the high school assistant principal throughout the year including a pre-school year meeting to attempt to hand select the Student's teachers, dictating when and how accommodations and support are to be rendered, etc.) L.G.'s November 29, 2018 email is particularly telling and is worthy of transcription in whole here:

Hi Andy,

Since this is the 10th school day since you presented us with an offer of FAPE, I wanted to let you know of our intention to sign the IEP as written in order to preserve Jack's right to FAPE (please see attached). However, as we discussed at the IEP meeting on Nov. 12, 2018, we have some concerns with changing [redacted] current placement as he is doing quite well in his classes and the team seemed to agree that it would be a more natural transition to implement the IEP at the beginning of the second semester in January. Jamie McCall did state that the school could not delay implementation. But upon consultation with outside sources, I have been made aware that delaying implementation of an IEP is completely within the purview of the IEP team if both parties (parents and school) agree to the delayed implementation.

Yet another and perhaps more compelling reason for a delay is my request for an Independent Education Evaluation. I am submitting an IEE which can be found in a separate email. This IEE is in regard to an assistive technology assessment performed by the school which was woefully inadequate in providing any other options to give [redacted] the necessary tools to become more independent. I have an independent assistive technology expert in the area of special education who has agreed to assess [redacted] and make recommendations. As such, I would also like to delay implementation of the IEP until he has made these recommendations in order to better inform the team of available technology resources. I'm sure the team and the district would be most eager to learn about available technologies for SLD students as it applies to such a large number of students throughout the district. In fact, I would be happy to discuss a public presentation with our expert for both parents and schools perhaps through MAF, MPAS, or SEPAC.

Just to clarify, I am signing the IEP only if the school district agrees to delay implementation in order to gather crucial data to inform the IEP team. Alternately, I would be willing to forego signing the IEP now as long as the district is willing to offer an assurance that they would be willing to reconvene the IEP team before the second semester in order to allow parents an opportunity to accept the IEP.

Kind Regards,

There is no indication that anyone on the team other than L.G. believed that it would be appropriate to delay the Student's IEP implementation. If a Student needs services as the parents suspected (hence requesting testing for special education services) and the needs are confirmed by that very testing, it is entirely unclear why a parent would suggest delaying providing needed assistance to the Student. It is similarly unclear why the parents, as they have done here, would withdraw consent and deny the Student the opportunity to have the services that the testing shows that he needs.

Again, it is unclear how the "assistive technology assessment performed by the school ... was woefully inadequate." Quite the contrary, it was very thorough as was the Petitioner's provision of services to the Student.<sup>3</sup> It is the height of arrogance to suggest, "I'm sure the team and the district would be most eager to learn about available technologies for SLD students as it applies to such a large number of students through the district. In fact, I would be happy to discuss a public presentation with our expert for both parents and schools ..." Again, because the Respondent refused to participate in the hearing, it is unclear what special training or education L.G. has in the area of assistive technology assessments or resources, but it is doubtful they are as impressive as Ms. Zell's accomplished education, experience, and practice.

The Respondent is encouraged to participate in, without interfering in, their child's education and trust the judgment of the skilled professionals providing that education to

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<sup>3</sup> All the services provided by the Petitioner and the intermediate school district have been without the benefit of additional special education funding and have instead been provided under the Student's 504 plan because the Respondent has repeatedly refused to consent to the provision of special education services.

the Student. In particular, the Respondent is urged to not withdraw their consent for services for the Student, particularly when the Respondent believes that these services are necessary, simply because the services are not being provided in the Respondent's exact preferred or suggested method. The Respondent is further urged to look again at the evaluations and recommendations provided by the Petitioner and to accept them, as is, at face value. The Petitioner's evaluations and recommendations are beyond appropriate – they are quite exceptional.

Respondent's request for an IEE at public expense pursuant to 34 CFR § 300.502(b)(3) is denied.

### CONCLUSION

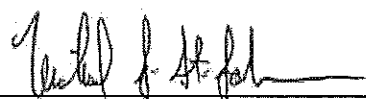
- A. Petitioner's evaluations of Student were appropriate.
- B. Respondent's request for an independent educational evaluation at public expense is denied.

### ORDER

IT IS HEREBY ORDERED that:

1. Petitioner's evaluations of Student were appropriate, pursuant to 34 CFR § 300.502(b)(2)(i).
2. Respondents' request for an independent educational evaluation at public expense is **DENIED**.
3. Although the final decision in this matter is that Petitioner's evaluations of Student were appropriate, Respondent still has the right to an independent educational evaluation, but not at public expense, pursuant to 34 CFR § 300.502(b)(3).
4. Any claims or defenses not specifically addressed herein are dismissed with prejudice.

**A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.**




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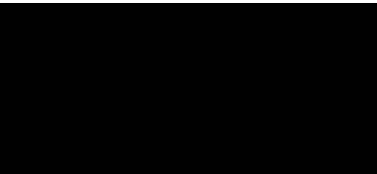
**Michael J. St. John**  
**Administrative Law Judge**

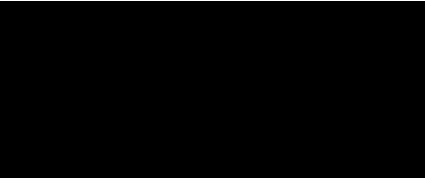
**PROOF OF SERVICE**

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 8<sup>th</sup> day of April, 2019.

  
\_\_\_\_\_  
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