FILED
OFFICE OF ADMINISTRATIVE HEARINGS
04/08/2026 8:59 AM

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
25 EDC 02864

Carteret County Board of Education Petitioner, v. Student by and through his parents Mother and Father Respondent.	**FINAL DECISION REDACTED** [1]

THIS MATTER was heard before the undersigned Honorable Samuel K. Morris, Administrative Law Judge Presiding, on December 10 through 12, 2025, at the Carteret County Schools' Board of Education in Beaufort, North Carolina.

After considering an evidentiary hearing on the merits held on the above-mentioned dates, arguments from counsel for all parties, all documents in support of or in opposition to the Parties' motions, all documents in the record including the Proposed Decisions as well as all stipulations, admissions, and exhibits, the Undersigned concludes that Petitioner failed to meet its burden to establish the requested evaluations of Student are necessary and appropriate to Student's educational programming and judgment is Ordered for Respondents.

APPEARANCES

For Petitioner: Rachel B. Hitch
Amy L. Clay
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Post Office Box 1801
Raleigh, NC 27602-1801

For Respondent: Stacey M. Gahagan

[1] Because Student's circumstances are sufficiently unique that it could permit his identification even after standard redactions of personally identifiable information (such as the student's and parents' names), this Redacted Final Decision also redacts the name of his current placement—Elementary School—as well as the names of certain staff. This additional redaction is necessary to ensure that Student cannot be indirectly identified through contextual details.

Nataleigh N. Knaak
Gahagan Paradis, P.L.L.C.
3326 Durham Chapel Hill Boulevard, Suite 210-C
Durham, NC 27707

WITNESSES

For Petitioners: Kristina Zangwill , expert witness
Dr. James Deni, expert witness
Special Education Teacher Elementary School (also referred to as "Special Education Teacher")

For Respondent: Mother, mother of Student
Dr. Kelly Anthony, expert witness
Dr. Kristin Burnette, expert witness

EXHIBITS

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the "Bates stamped" numbers.

Stipulated Exhibits ("Stip. Ex."): the Court admitted into evidence Stipulated Exhibits numbers 2, 6, 7, 8, 9, 10, 11, 12, 13, and 23.

Petitioners' Exhibits ("Pet'r. Ex."): Petitioners' Exhibits numbered 4, 7, 8, 12, 18, 20 (pp 92-93), 25 (pp. 243 – 248), 27 (pp. 308-311), 28 (pp. 362-368), 30 and 31 were submitted as evidence in support of Petitioners' case-in-chief.

Respondent's Exhibits ("Resp't Ex."): Respondent's Exhibits numbered 1, 2, 4, and 5 were submitted as evidence in support of Respondent's case-in-chief.

The aforementioned exhibits have been retained as part of the official record of this contested case.

GLOSSARY OF TERMS

Glossary of Acronyms

AAC – Assistive and Augmentative Communication
AT – Assistive Technology
AU – Autism (IDEA eligibility category)
BIP – Behavior Intervention Plan
BSRA – Bracken School Readiness Assessment
C-TONI – Comprehensive Test of Nonverbal Intelligence-Second Edition

DAS-II – Differential Ability Scales-Second Edition Normative UpdateDD – Developmental Delay
ESY – Extended School Year
FAPE – Free Appropriate Public Education
FBA – Functional Behavior Assessment
HillRAP – Hill Reading Achievement Program
IDEA – Individuals with Disabilities Education Improvement Act
IEP – Individualized Education Program
LETRS – Language Essentials for Teachers of Reading and Spelling
LRE – Least Restrictive Environment
NEPSY-II – Neuropsychological Assessment, Second Edition
OAH – Office of Administrative Hearings
OHI – Other Health Impaired (IDEA eligibility category)
SDI – Specially Designed Instruction
SOL – Statute of Limitations
SPIRE – Specialized Program Individualizing Reading Excellence
WIAT-IV – Wechsler Individual Achievement Test, Fourth Edition (WIAT-IV)
WISC-V – Wechsler Intelligence Scale for Children-Fifth Edition
WRAML – Wide Range Assessment of Memory and Learning

ISSUES

The Parties agreed to the issues identified for hearing:

1. Whether the cognitive measure of a psychological evaluation is necessary and appropriate for the purposes of educational programming for Student.

2. Whether an educational evaluation is necessary and appropriate for the purposes of educational programming for Student.

BURDEN OF PROOF

Petitioner bears the burden of proof in North Carolina. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof "lies where it usually falls, upon the party seeking relief." *Schaffer,* 546 U.S. at 57-58. The standard of proof is by a preponderance of the evidence. *Id.*; N.C. Gen. Stat. § 150B-34(a).

DEFERENCE TO EDUCATORS

Due regard in administrative cases is given "to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." N.C. Gen. Stat. § 150B-34(a). Courts give educators "deference . . . based on the application of expertise and the exercise of judgment by school authorities." *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580

US. 386, 404 (2017). "By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement," and a "reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Id.*

When school employees are unable to offer a "cogent and responsive explanation for their decisions," or the evidence presented does not support their decisions, they are not entitled to deference. *Smith v. Dist. of Columbia*, 2018 WL 4680208, at *7 (D. D.C. Sept. 28, 2018) (finding "DCPS failed to offer the 'cogent and responsive explanation for its placement decision' that would entitle it to deference); *accord Z.B. v. Dist. of Columbia*, 888 F.3d 515, 526 (D.C. Cir. 2018) (noting the absence of evidence "on what grounds DCPS may have reasonably concluded that the IEP was tailored to Z.B.'s needs at that time").

The Undersigned afforded appropriate deference to the Board's school witnesses regarding educational decisions for Student where they "demonstrated knowledge and expertise." However, the Tribunal gave little deference to witnesses who were unable to justify the decisions made with a cogent or responsive explanation, or where the documentary evidence did not support their testimony.

EVIDENTIARY ISSUES DURING HEARING

Limited Scope – Motion in Limine

1. On December 9, 2025, Respondents filed a Motion *in Limine* "to exclude the presentation of any evidence related to the appropriateness of the ECS [Extended Content Standards] for [Student] and limit the presentation of evidence to the two (2) narrow, discrete issues in this case—whether the requested evaluations are 'necessary and appropriate' under the IDEA to inform [Student's] educational programming." Motion at 8.

2. Respondents also requested the Tribunal "issue a definitive ruling on whether a cognitive evaluation is required before changing a student's educational programming to the ECS" and "that the Parties [be] bound by the decision of this Tribunal and collaterally estopped from arguing this legal question in the parallel matter of 24 EDC 03399." *Id.*

3. The issue of the appropriateness of the ECS for Student is an issue in the earlier filed parallel case, 24 EDC 03399. *Id.* at 1.

4. The Parties stipulated "Petitioner believes the ECS are the appropriate alternative academic achievement standards for [Student]." Stip. 12.

5. On the first day of hearing, the Undersigned heard argument on Respondents' Motion.

6. Petitioner agreed that whether the ECS are appropriate for Student was not an issue in this case and represented that it did not intend to present evidence related to the appropriateness of the ECS for Student. T vol 1 p 12:15-19.

7. Accordingly, the Undersigned granted Respondents' Motion "insofar as it seeks to exclude evidence relating to the appropriateness of the extended content standards as a placement for [Student]." T vol 1 p 18:21-23.

8. Additionally, the Undersigned denied Respondents' Motion for a definitive ruling on the requirement of a cognitive evaluation for ECS as outside the scope of the Petition. T vol 1 pp 19:2-9, 20:2-6.

Documentary Evidence

9. The North Carolina Rules of Evidence govern all contested cases in this Tribunal except as otherwise provided in the administrative rules and Section 150B-29 of the North Carolina General Statutes. 26 NCAC 03 .0122. "Evidence in a contested case including records and documents must be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted by G.S. 150B-30 [official notice]." N.C. Gen. Stat. § 150-29(b).

10. "All evidence to be considered in the case, including all records and documents or a true and accurate copy, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case." 26 NCAC 03.0122(3).

11. Petitioner's witnesses alluded to work samples completed by Student; however, no work samples were admitted into evidence. "To the extent most of this 'alluded to' documentary evidence was not made a part of the record, it cannot be considered." *L.P. v. Wake County Board of Education,* (NC OAH No. 20 EDC 00832 (Bawtinhimer, ALJ). The testimonies of Petitioner's witnesses about such evidence will be given proper weight and to the extent that no supporting documentary evidence is available for consideration, it will have no weight. *Id.*

PROCEDURAL HISTORY

12. Petitioner filed a Petition for Contested Case Hearing ("Petition") on August 6, 2025.

13. On August 11, 2025, Respondents attorneys Nataleigh Knaak and Stacey Gahagan filed their Notices of Appearance.

14. On August 12, 2025, the Undersigned issued an Order Setting Hearing and General Pre-Hearing Order scheduling the Due Process Hearing to start on September 22, 2025.

15. On August 19, 2025, Respondents filed a Notice of Insufficiency. The same day this Tribunal issued a Request for Response to Notice of Insufficiency. Petitioner timely responded on August 21, 2025.

16. On August 21, 2025, Respondents filed a Response to the Petition for Contested Case Hearing and a separate Petition for Consolidation.

17. On August 22, 2025, the Undersigned issued an Order Of Insufficiency Granting Leave For Petitioners To Amend Petition and Deferring Ruling on Motion to Consolidate Pending Amendment of Petition.

18. Petitioner filed its Amended Petition on August 29, 2025.

19. On September 2, 2025, the Undersigned issued an Order Setting Hearing and General Pre-Hearing Order scheduling the Due Process Hearing to start on October 13, 2025.

20. On September 5, 2025, the Undersigned issued a Request for Response to Respondents' Petition to Consolidate.

21. Respondents timely filed a Response to the Amended Petition on September 8, 2025.

22. On September 15, 2025, Petitioner filed a Response in Opposition to the Motion to Consolidate.

23. On September 17, 2025, Respondents filed a Motion for Leave to Reply, which the Tribunal granted on September 18, 2025.

24. On September 22, 2025, Respondents timely filed a Reply to Petitioner's Response in Opposition to Respondents' Motion to Consolidate.

25. On September 26, 2025, Respondents filed an unopposed Motion to Continue the Hearing.

26. On September 29, 2025, the Chief Administrative Law Judge Melissa Owens Lassiter issued an Order Denying Motion to Consolidate.

27. On October 1, 2025, the Undersigned issued an Order Granting Extension of Resolution Period, Adjusting Hearing Deadlines, and for Status Report, scheduling the Due Process Hearing to start on December 10, 2025.

28. On October 14, 2025, Respondents filed a Motion for Clarification to clarify timelines in the scheduling order as it related to the disclosure of experts, final witness lists, marked exhibits, stipulations. The following day the Undersigned issued a Request for Response.

29. On October 27, 2025, Petitioner filed a response to the Motion for Clarification.

30. On November 3, 2025, the Parties participated in mediation, which was unsuccessful.

31. In accordance with the scheduling order, the Parties exchanged expert disclosures on November 19, 2025.

32. On November 25, 2025, this Tribunal issued a Notice of Hearing, Notice of Prehearing conference, and Notice of Conference Call.

33. The same day, Respondents filed a Motion to Require Sequestration of Witnesses.

34. On December 1, 2025, this Tribunal issued an Order Granting the Sequestration of Witnesses.

35. The same day, the Parties filed a Joint Motion to Permit Telephonic or Video Testimony.

36. On December 2, 2025, Respondents filed a Motion to Continue as two (2) other hearings were scheduled to occur during the same three (3) day timeframe in the parallel matter, 24 EDC 03399.

37. On December 3, 2025, this Tribunal issued an Order Permitting Telephonic or Video Testimony.

38. The same day, the Parties filed their exhibit and witness lists on the docket.

39. On December 4, 2025, Parties participated in a Webex pre-hearing conference.

40. On December 8, 2025, this Tribunal issued an Order Denying Motion to Continue as the hearings in the parallel matter were removed from the hearings calendar.

41. On December 9, 2025, Respondents filed a Motion in Limine discussed *infra*.

42. The same day, the Parties also filed an Amended Draft Prehearing Order.

43. On December 10, 2025, the Tribunal issued an Order on Final Pre-Hearing Conference.

44. The Parties presented evidence in the Due Process hearing from December 10-12, 2025.

45. On December 15, 2025, this Tribunal issued a Post-Hearing Order.

46. On December 19, 2025, the Parties filed their verifications and admitted hearing exhibits.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, Stipulated Facts, and the Proposed Final Decisions, the undersigned administrative law judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including by not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witnesses to see, hear, know, and remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in this case including, but not limited to verbal statements at IEP meetings, IEP meeting documents, prior evaluations, and all other competent and admissible evidence. Even though this Final Decision may incorporate language from the Parties' respective Proposed Final Decisions, credibility determinations are made independently from any proposals by the Parties. The Undersigned notes that legal counsel of both Parties also heard and/or observed each witness testify. The Undersigned found all witnesses in this hearing to be credible but awarded more weight to the testimony of some based on the factors identified above and the specific limitations to expert testimony as discussed *infra*.

Stipulations of Fact

1. At the start of the hearing in this matter, the Parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in proposed Pre-Hearing Orders, which were approved and filed in the OAH December 10, 2025. Stipulations are referenced as "Stip. 1," "Stip. 2," "Stip. 3," etc. To the extent the Stipulations are not specifically stated herein, the Stipulations of Fact in the Order on the Pre-Trial Conference are incorporated fully herein by reference.

Prior Orders

2. Unless specifically contradicted herein, this Final Decision incorporates and reaffirms all evidentiary Findings of Fact and Conclusions of Law contained in previous Orders entered in this litigation.

3. To the extent that the foregoing Conclusions of Law contain Findings of Fact or that the Findings of Fact are conclusions of Law, they are intended to be considered without regard to their given labels.

The Parties and Summary of the Case

4. Petitioner, Carteret County Board of Education ("the Board"), is a local educational agency ("LEA") receiving monies pursuant to the IDEA and as defined by the IDEA 20 U.S.C. § 1401. *See* N.C. Gen. Stat. § 115C-5(7a).

5. Respondent Mother is Student's mother and Respondent Father is Student's father (collectively referred to herein as "the Family"). During all times relevant to the issues in this case, Mother, Father, and Student resided in Carteret County, North Carolina.

6. The Board commenced this contested case pursuant to 34 C.F.R. § 300.300(c)(1)(ii). *Id.* (Providing that a school district may, but is not required to, pursue reevaluation by using consent override procedures and filing a due process petition.). When a district chooses to do so, as the Board has here, it is bound by the due process petition it files. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d).

7. Although the Tribunal attempted to delineate the issues in this case from the parallel case, 24 EDC 03399,[2] the Board's averments in its Amended Due Process Petition ("ADPP") and the Family's responses demonstrate the undeniable overlap of these issues, and, importantly, the Parties' distinct understanding of the issues the Family raised in the parallel case. For example, the Board asserts "[Student's] cognitive functioning is in dispute." ADPP p 1 (Summary of the Case).

[2] The Undersigned is also the assigned Administrative Law Judge in the parallel matter.

The Undersigned is unaware of any dispute regarding Student's cognitive functioning. It is not in dispute in the parallel case (24 EDC 03399). That case is about, *inter alia,* the Board's decision to change Student's course of study to the ECS over parental objection and the development of Student's IEP in August 2024 which changed his placement. The Family's Summary of the Case supports the Tribunal's understanding of the issues in the parallel case. Response at 1-3 (Summary of the Case) (discussing predetermination, parental participation, segregation, and informed consent).

8. The Board further asserts that there is a dispute as to whether Student is appropriate for the Extended Content Standards ("ECS") affecting FAPE; however, the Parties agreed this question was not the subject of this due process proceeding. T vol 1 p 12:17-19. The Undersigned acknowledges instruction on the ECS can be part of the educational programming for a student, and, therefore, allowed the Parties to present evidence regarding the ECS generally.

9. The Board further acknowledges the overlap of this case with the parallel case and avers, "In addition, psychological and educational evaluations are necessary to resolve disagreement between Petitioner and Respondent with regard to the appropriateness of [Student's] course of study." ADPP ¶ 52. The Family contends the Board's request for evaluations was an "attempt to utilize the results of any psychological or educational assessment of [Student] as evidence in the existing case, 24 EDC 03399 . . . ." Response ¶ 52.

10. The Family counters that this case is a dispute about "informed consent." Response pp 1-3 (Summary of the Case). The Board asserts: "In an effort to ensure that Mother would be able to provide completely informed consent, the District's school psychologist proposed, with specificity, the specific measures (including subtests) that she intended to utilize in psychological and educational assessments of [Student]" ADPP ¶ 40. The Family admits Ms. Zangwill, the Board's school psychologist, "agreed to provide a detailed list of which assessments and subtests she would administer to [Student]." Response ¶ 40. A question for this Tribunal is whether the Board in providing the list of evaluations and subtests was sufficient effort for the Board to obtain Student's parents "informed consent" consistent with the IDEA.

11. The Board contends that an educational evaluation was necessary to "assist in determining the grade equivalency of [Student's] academic skills," and "[a] cognitive evaluation would be useful in determining the extent of [Student's] intellectual disability and would also allow the team to consider information regarding specific components of cognitive functioning such as working memory, processing speed, nonverbal reasoning, and visual spatial processing." ADPP ¶ 21. The Family denied this averment. Response ¶ 21. The Parties agreed the standard for this Tribunal to override parental consent in this hearing was not whether the

evaluations would "assist" or "be useful," but whether they were "necessary and appropriate." *See Order on Pre-Trial Conference*, Dec. 10, 2025, identifying the Issues for Hearing.

12. The Board contends "standardized psychological and educational evaluation data is needed to develop an IEP reasonably calculated to enable [Student] to make progress appropriate in light of his circumstances and to ensure [Student] receives the free appropriate education to which he is entitled." ADPP at 1 (Summary of the Case). The Board averred, and its witnesses testified, that Student has not had a psychological or educational evaluation since 2017.

13. Finally, in its Prayer for Relief, the Board asks this Tribunal, *inter alia,* to find the Board "has sufficiently shown that educational and psychological reevaluations of Student are necessary for [the Board] to develop a reasonably calculated IEP that enables Student to make progress appropriate in light of his unique circumstances." ADPP ¶ 59.

Student's Unique Circumstances

14. Student is an eleven (11) year old student and is currently a fifth (5th) grade student at Elementary School. Stips. 1, 3.

15. Student is a student with complex support needs, or extensive support needs, which is a student that has "more than one disability that can't be just one thing. . . . In [Student's] case, it's autism and Down syndrome." T vol 3 p 446:5-10 (T of Burnette).

16. Student has been diagnosed with Down syndrome, autism spectrum disorder, Type-1 diabetes, mild conductive hearing loss, obstructive sleep apnea, Hashimoto's hypothyroidism, and Attention Deficit Disorder. Stip. 4; Stip. Ex. 11.

17. Mother described Student as "God's greatest gift to us, one of the greatest surprises. He is an inquisitive and resourceful little boy who loves life and loves people." T vol 2 p 327:20-24. Dr. Deni recognized Student's strengths in enjoying reading and math and having supportive parents. T vol 2 p 298:2-5 (T of Deni).

18. Nevertheless, Student has difficulties. He has behavioral issues, tendencies for refusals, and is supported by a Registered Behavior Technician (RBT) throughout the school day, who is supervised by a Board Certified Behavior Analyst (BCBA). T vol 3 p 403:24-25 (T of Anthony); T vol 1 p 188:23-25 (T of Special Education Teacher); T vol 2 p 248:16-19 (T of Special Education Teacher). Student has documented latency issues, which delay his response time, fine motor deficits, and utilizes an Augmentative and Alternative Communication (ACC) device to

communicate. T vol 1 p 157:7-9 (T of Zangwill); T vol 3 pp 392:20-21, 403:22-23, 406:9-10 (T of Anthony).

19. Mother testified that she began research relating to Student's constellation of disabilities while he was in utero, starting with "what our next steps were . . . what is this child's life going to look like . . . and what do … we, collectively, Dad and I, need to do to prepare him and give him every ample opportunity of all the things he needs … what do we need to do as parents, full-court press, to give this child a life where he has all of the resources possible and tools so that he can succeed." T vol 2 p 329:4-14 (T of Mother). "I've never been told he'll never get there, it's always … just going to take a little bit longer." T vol 2 p 332:15-16 (T of Mother).

20. Mother has provided resources to Student's IEP team about his disabilities including manuals on early intervention, books on how children with Down syndrome read and do math, guidelines set forth by governing and regulatory bodies, information from Down Syndrome International, and the "gurus" of Down syndrome. T vol 2 p 330:4-22 (T of Mother).

21. During the reevaluation meeting, Student's IEP Team reviewed progress made towards his IEP goals. T vol 1 p 200:10 (T of Special Education Teacher). Student's modified work in math included work on place value, order of operations, division, multiplication, and graphing. T vol 2 p 250:8-18 (T of Special Education Teacher).

The Board's Witnesses

Expert Witnesses

Kristina Zangwill (T vol 1)

22. Kristina Zangwill is a school psychologist for Carteret County Schools, serving Elementary School, Elementary School Two, and Middle School. T vol 1 p 34:12-19.

23. Ms. Zangwill testified as both a fact and an expert witness on behalf of her employer.

24. Ms. Zangwill was received as an expert in "school psychology and the use of evaluations for the purpose of IEP development." T vol 1 p 67:12-14.

25. Ms. Zangwill earned her Bachelor of Arts in Psychology from the University of Tennessee and her Master of Arts in School Psychology with a Certificate of Advanced Study from Towson University. Pet'r. Ex. 8 p 14. T vol 1 p 35:9-18. Ms. Zangwill has worked as a school psychologist for fifteen (15) years and is licensed by the North Carolina Department of Public Instruction as a school

psychologist through June 30, 2028. Pet'r. Exs. 7, 8. T vol 1 pp 34:22-24; 37:22-24.

26. Ms. Zangwill testified that, during her employment in Craven County, she provided autism-related training to general education teachers, behavior modification training to special education teachers, and training on the ADOS to speech-language pathologists, occupational therapists, and psychologists. T vol 1 p 50:18-25. Ms. Zangwill acknowledged that she has not authored peer-reviewed publications, delivered professional presentations, served as a guest lecturer, or otherwise engaged in scholarly or professional activities commonly associated with academic expertise. Pet'r Ex. 8.

27. The Undersigned accepted Ms. Zangwill as an expert pursuant to Rule 702(a) of the North Carolina Rules of Evidence. The Undersigned finds that Ms. Zangwill possesses specialized knowledge, skill, training, and experience as a school psychologist that may assist the trier of fact in understanding the evidence and determining the facts in issue. While the absence of peer-reviewed publications or professional presentations is a factor that may be considered in evaluating the reliability and persuasiveness of expert testimony, such credentials are not mandatory prerequisites to qualification under Rule 702(a). Rather, those considerations inform the weight and credibility to be afforded the testimony.

28. Ms. Zangwill testified that over approximately fifteen (15) years as a school psychologist, she conducted between 800 and 1200 evaluations. However, she further testified that she had only evaluated around twenty (20) students with Down syndrome during that time. *Compare* T vol 1 p 49:6-7 *with* T vol 1 p 53:18-24.

29. The Undersigned found Ms. Zangwill's testimony to be of limited value for purposes of determining the issues in this case. In preparation for her testimony, Ms. Zangwill testified that she reviewed, *inter alia*, "parts" of Student's file, correspondence exchanged with Mother, manuals for the "WISC-V, DAS II, and the WIAT-4, and certain observational notes. T vol 1 pp 138:16-22; 139:13-14. On cross-examination, she acknowledged that she did not review the portion of the WISC-V manual pertaining to testing students with disabilities and could not recall when she last reviewed that section. T vol 1 pp 139:21-140:1.

30. Additionally, several opinions offered by Ms. Zangwill were conclusory and without a clear explanation of her methodology or analysis. For example, when asked whether she agreed with the conclusion of the psychologist who conducted the 2022 educational and psychological evaluation, she responded simply, "no." No testimony was elicited identifying specific methodological flaws, misapplication of testing instruments, or other substantive bases for her disagreement. The absence of such explanation diminishes the reliability and persuasive value of her opinions.

31. Finally, Ms. Zangwill was unable to recall whether she had received training regarding informed consent. T vol p 147:19-21. Collectively, these deficiencies do not render her testimony inadmissible, but they substantially limit the weight the Undersigned affords her expert opinions, and her expert and factual testimony will be given the appropriate weight throughout the Final Decision.

Dr. James Deni (T vol 2)

32. Dr. Deni was tendered and accepted as an expert in the areas of school psychology and evaluations. T vol 2 p 277:18-19.

33. Dr. Deni earned a Bachelor of Science from Youngstown State University, a Master of Education in Guidance and Counseling from Baylor University, and a Doctor of Education in Educational Psychology from Baylor University. Pet'r. Ex. 12 p 21. T vol 2 p 265:12-18.

34. Although not reflected on his curriculum vitae, Dr. Deni testified that he worked as a school psychologist in Allegheny County from 1972 until becoming a program coordinator at Appalachian State University in 1984, T vol 2 pp 272:20-273:10; Pet'r. Ex. 12 p 23, and has been affiliated with Appalachian State University in various capacities from 1972 until 2025. Pet'r. Ex. 12 p 21.

35. Over the course of approximately fifty-three (53) years, Dr. Deni has published thirty (30) journal articles, two (2) of which were peer-reviewed. Pet'r. Ex. 12 pp 30-32. He has presented at approximately 156 conferences over the past thirty-eight (38) years. Pet'r. Ex. 12 pp 30-46. In addition, Dr. Deni is licensed in North Carolina as a school psychologist, T vol 2 p 276:23-25, and has testified that he "probably" conducted "over a thousand or more" evaluations while working in Allegheny County. T vol 2 p 270:12-13.

36. There was no specific testimony regarding what materials Dr. Deni reviewed in preparation for his testimony on behalf of Petitioner.

37. Dr. Deni testified that he has never administered the WISC-V, had not administered the C-TONI in at least ten (10) years, and had not administered the WIAT-IV since the mid-1980s, when he was practicing as a school psychologist. T. vol 2 p 274:3-4, 11-21. Dr. Deni further testified he was asked to offer an opinion as to whether the evaluations proposed by Ms. Zangwill were appropriate, but that he was not asked to review the psychometric properties of administration manuals for those instruments in forming his opinion about whether they were appropriate for Student T vol 2 p 311:13-22 (T of Deni).

38. Although Dr. Deni testified generally regarding the importance of parental involvement in the IEP and evaluation process, he acknowledged on cross-

examination that he had not met Student or his parents and had not requested to do so. *Compare* T vol 2 pp 278:19-24, 296:7-12, 301:22-302-1 *with* T vol 2 p 305:24-25.

39. Notably, Dr. Deni did not offer testimony specific to conducting an evaluation of Student, nor did he provide specific testimony analyzing the necessity or appropriateness of the evaluations proposed with respect to Student. According to his testimony, Dr. Deni was only asked to testify about whether the evaluations proposed by Ms. Zangwill were appropriate *not* whether they were appropriate *for* Student. T vol 2 p 311:16-18.

40. The Tribunal finds that Dr. Deni's education, licensure, academic experience, publications, and professional background qualify him to offer expert opinions in the areas of school psychology and evaluations, consistent with the scope in which he was accepted as an expert. Pet'r. Ex. 12.

41. Dr. Deni was the only witness to testify on behalf of the Board regarding Student's strengths, including reading and mathematics. T vol 2 p 298:2-3 (T of Deni). He testified that Student "has a lot of strengths, and . . . we should build on those strengths." T vol 1 p 298:22-23 (T of Deni).

42. Dr. Deni also testified that Student's challenges with maintaining attention, behaviors affecting performance, social interaction, and use of social cues "not surprising" considering Student's autism diagnosis. T vol 2 pp 298:9-13; 293:2-4 (T of Deni).

Fact Witnesses

Special Education Teacher (T vol 1 & 2)

43. Special Education Teacher is a special education teacher at Elementary School. T vol 1 p 182:1-4. Pet'r. Ex. 4 p 7. She worked as an Exceptional Children (EC) teacher for nine (9) years, the last four (4) of which she has been employed by Petitioner. T vol 1 p 182:5-9; Pet'r. Ex. 4 pp 7-8.

44. Special Education Teacher earned her Bachelor of Arts in Sociology from CUNY Queens College and her Masters in Special Education and General Education 1st-6th from Touro College. Pet'r. Ex. 4 p 8; T vol 1 pp 182:23-183:2.

45. Special Education Teacher is licensed to teach in both general and special education kindergarten through sixth grade. T vol 1 p 183:14-16; Pet'r. Ex. 4 p 9.

46. Special Education Teacher is not certified in any structured literacy reading programs. T vol 2 p 241:10-13; Pet'r. Ex. 4.

47. In preparation for her testimony, Special Education Teacher "reviewed IEP notes, and prior written notices, and all the data that [she has] on Student over the last few years." T vol 2 p 240:17-18.

48. Similar to Ms. Zangwill's testimony, much of Special Education Teacher's testimony was marked with leading questions. For example, when asked "as part of its decision making as to why additional evaluations were necessary, did the team review any assessment data for Student" Special Education Teacher simply said, "Yes." T vol 1 p 194:18-21.

49. When asked whether there was discussion about how evaluation information would be used, Special Education Teacher stated, "yes there was" but testified no further about the contents of that discussion. When followed up with "was Mother given an opportunity to give input into the discussions" again, Special Education Teacher stated "yes" with no further explanation. T vol 1 p 218:17-23.

50. The Undersigned finds Special Education Teacher's testimony as Student's EC teacher credible and will give it the appropriate weight.

The Family's Witnesses

Mother, Student's Mother (T vol 2)

51. Mother is a Petitioner in this matter and Student's mother. T vol 2 327:17-18.

52. The Undersigned found Mother to be credible even though as Student's mother she has an explicit and implicit bias for Student's best interest.

53. The Undersigned observed Mother's demeanor as she testified on direct examination and was cross examined by opposing counsel. The Undersigned observed Mother to be forthright during the entirety of her testimony.

54. As Mother was a credible witness, her testimony will be given weight throughout the Final Decision.

Expert Witnesses

Dr. Kelly Anthony (T vol 3)

55. Dr. Anthony was received as an expert in "child clinical and pediatric psychology and selecting, conducting, and interpreting evaluations of children with disabilities." T vol 3 395:22-25.

56. Dr. Anthony earned her Bachelor of Science with Highest Honors in Psychology from the University of North Carolina at Chapel Hill; her Master of Arts in Clinical Psychology with a specialization in Child Clinical/Pediatric Psychology from the University of North Carolina at Chapel Hill; and her Doctor of Philosophy in Clinical Psychology with a specialization in Child Clinical/Pediatric Psychology from the University of North Carolina at Chapel Hill. Resp't. Ex. 4, p 67; T vol 3 p 388:17-23.

57. Dr. Anthony completed her predoctoral internship at Duke University. Resp't. Ex. 4, p 69; T vol 3 pp 388:23-389:4.

58. Dr. Anthony worked for thirteen (13) years as a professor for Duke University Medical Center, Departments of Pediatrics and Psychiatry and Behavior Sciences and completed postdoctoral work at Duke University's Center for Developmental Child Health, where she supervised clinical psychology interns, was head of the psychological testing practice, and supervised students learning how to administer psychological tests. Resp't. Ex. 4, pp 68-69.

59. Dr. Anthony has also served as a guest lecturer and consultant for the Duke Children's Education Law Clinic from 2006 to 2019 and on the advisory committee for The Hill Learning Center. Resp't. Ex. 4, p 70.

60. In preparation for her testimony, Dr. Anthony reviewed all of the proposed exhibits exchanged by the Parties, Student's evaluations, "both the administrative and technical manuals for all of the psychological tests that were either currently or formerly proposed by the school system. . . the APA Principals and Ethical Guidelines for Psychological Assessment and Testing[,]" literature on psychological testing "in populations of children with severe sensory impairments[,]" met with Mother, and observed [Student]. T vol 3 pp 392:16-393:4 (T of Anthony).

61. Dr. Anthony also "listened to [the recordings of] three (3) IEP meetings where people described his functioning and behavior . . . [and] read all the reports that were provided." T vol 3 p 424:12-15 (T of Anthony).

62. Dr. Anthony's education and background qualified her to offer her expert opinion about the areas of which she was qualified as an expert by the Tribunal. Resp't. Ex. 4.

63. Dr. Anthony applied the principles and methods upon which she based her testimony to the facts of the case. *See, e.g.,* T vol 3 pp 403:20-405:8 (discussing which aspects of Student's disability profile she would take into consideration when selecting assessments); pp 406:7-408:6 (discussing how Student's latency delay would impact the scores on the standardized assessments proposed).

64. Dr. Anthony had direct contact with Student and his family and reviewed Student's education record to form the basis of her opinions about the appropriateness and necessity of evaluating Student in preparation to testify on Student's behalf. T vol 3 392:16-393:4.

65. Dr. Anthony was the only expert offered in the areas she was qualified. Additionally, she was the only expert that testified to the validity and reliability of the evaluations proposed by the Board as applied to Student. As such, her testimony about these areas is given considerable weight. Thus, her testimony was informative and persuasive to the Undersigned.

Dr. Kristin Burnette (T vol 3)

66. The Tribunal received Dr. Burnette as an expert in "special education, special education programming for children with complex support needs, and evidence-based practices with respect to the instruction of students with complex support needs in academic and non-academic settings." T vol 3 pp 450:22-451:3; 454:24-455:1.

67. Dr. Burnette earned her Bachelor of Arts (BA) in Special Education from University of North Carolina at Wilmington; her Master of Education (M.Ed.) in Special Education, Low Incidence Disabilities from East Carolina University; and her Doctor of Philosophy (Ph.D.) in Special Education from the University of North Carolina at Greensboro. Resp't. Ex. 5 p 71. Dr. Burnette holds a National Board Certification as Exceptional Needs Specialist. Resp't. Ex. 5 p 71.

68. Dr. Burnette has served as a guest lecturer and professor at various universities since 2018 and has been employed as an Assistant Professor at East Carolina University since 2022. Resp't. Ex. 5 p 71.

69. Dr. Burnette has published thirteen (13) peer-reviewed journal articles, all of which focus on special education, with many focusing on inclusive education and educating students with extensive support needs. Resp't. Ex. 5 pp 72-74. Dr. Burnette has presented at over forty (40) conferences and workshops focusing on the provision of special education services. Resp't. Ex. 5 p 75-77.

70. Dr. Burnette also serves as an Educational Consultant for school districts in North Carolina and in other states. Resp't. Ex. 5 p 77; T vol 3 447:1-6.

71. Dr. Burnette reviewed research conducted, reviewed all of the documents, and listened to the recordings of IEP meetings. T vol 3 p 448:15-19.

72. Dr. Burnette also observed Student at school. T vol 3 pp 448:20-450:1 (testimony regarding Dr. Burnette's observation of Student).

73. Dr. Burnette's education and background qualified her to offer her expert opinion about the areas of which she was qualified as an expert by the Tribunal. Resp't. Ex. 5. Dr. Burnette also observed Student in the school setting, had direct contact with Student and his family, and reviewed Student's education record to form the basis of her opinions in preparation to testify on Student's behalf.

74. Dr. Burnette was the only expert offered in the areas she was qualified. As such, her testimony about these areas is given considerable weight.

Relevant Facts

I. INFORMED CONSENT

75. At every meeting where the school team discussed conducting cognitive and educational assessment of Student, Mother asked: "what would the team be getting out of the [psychological and educational] assessments" that the school-based members of the IEP Team were recommending. Stip. Ex. 7 p 52; Pet. Ex. 27 at 309 ("how would this change or add to what is being done, the delivery. What new information do you gather?").

A. Information Provided to Mother in 2024

76. Following the September 2021 IEP meeting, the next documented discussion of a cognitive evaluation occurred in February 2024. T vol. 3 p. 341:14-18 (T of Mother). Mother testified that her understanding as to why a psychological evaluation had not previously been conducted was that it "would not be valid, it would not be reliable, and it would not provide any additional information." T vol. 3 p. 339:15-17 (T of Mother). When the topic of a cognitive evaluation was raised, she testified she was "kind of caught off guard," noting that Student's IEP goals had already been developed and that she was uncertain about the direction of the discussion. T vol. 2 p. 343:5-6, 12-13 (T of Mother).

77. During the 2024 discussions, Mother asked numerous questions regarding the proposed cognitive evaluation. T vol. 2 p. 343:4 (T of Mother). She inquired what the evaluations would entail, which assessments would be selected and why, how the results would be helpful, how they would translate to Student's day-to-day programming, the risks and benefits of testing, and the potential consequences of the evaluation. T vol. 2 p. 343:9-18 (T of Mother). After Ms. Zangwill identified several assessments she would consider, Mother asked whether those instruments were normed on children with Down syndrome and autism, explaining that her inquiry was consistent with the type of due diligence she would undertake in her medical practice before offering a service. T vol. 2 p. 344:4-8 (T of Mother). She also asked whether the RBT could sit in during testing; the Team responded that doing so would de-standardize the assessment. Pet. Ex. 27 p. 309.

78. In response to Mother's questions, the Team stated that the assessments would provide an opportunity to revisit lower grade-level skills, consult with the SLP regarding Student 's abilities, assist with IEP goal development, and help identify skill gaps. Pet. Ex. 27 at 309. The Team further indicated it wished to determine the degree of cognitive impairment (e.g., mild or moderate) and assess working memory, processing speed, nonverbal reasoning, and visual-spatial processing. *Id.* In 2025, the Team added that it was difficult to determine what Student could or would complete without administering assessments. Stip. Ex. 7 p. 52. Mother testified, however, that she did not receive a clear explanation of how the proposed evaluations would be utilized or how the results would specifically translate into Student's programming, describing the responses as "vague" and comprised of "big words" and "buzz words." T vol. 2 p. 344:1-21 (T of Mother)

79. At Mother's request, the Team identified the WRAML (Wide Range Assessment of Memory and Learning) and the NEPSY (Developmental Neuropsychological Assessment) as assessments under consideration, with the possibility of selecting components from other instruments. Pet. Ex. 27 p. 310. These differed from the evaluations later identified in 2025. *Compare* Pet. Ex. 27 p. 310 *with* Stip. Ex. 10 p. 491. The IEP Team informed Mother that the WRAML and NEPSY were normed for autism and intellectual disabilities, though not for a dual diagnosis of autism and Down syndrome. Pet. Ex. 27 at 310. Dr. Anthony testified that this information was not accurate, stating that none of the proposed evaluations included children with Student's profile in their normative samples. T vol. 3 p. 405:15-16 (T of Anthony). Ms. Zangwill could not recall whether she informed Mother that the proposed assessments were normed on students with autism and intellectual disabilities, despite the Prior Written Notice indicating such information was provided. T vol. 1 p. 152:5 (T of Zangwill); Pet. Ex. 27.

80. Ms. Zangwill testified that in 2024 she did not propose specific evaluations, but that possible assessments arose in conversation as options and that Mother was not told they would definitively be utilized. T vol. 1 pp. 148:14-149:14 (T of Zangwill). The record does not reflect that a consent form for a psychological evaluation was provided in 2024, and the evidence indicates consent for such an evaluation was not sought until 2025. *Id.*; *Compare* ADPP ¶ 23.

81. At the March 15, 2024 IEP meeting, Dr. Anita Boyd (LEA Representative) informed Mother that she could not consent to only part of a psychological evaluation and would need to consent to or refuse the evaluation in its entirety. T vol. 1 p. 146:12-15, 25 (T of Zangwill). Mother testified that this "all or nothing" approach affected her decision-making and contributed to her feeling "limited and blocked in." T vol. 2 p. 346:16-20 (T of Mother). Following the meetings, Mother independently researched the proposed assessments. T vol. 2 pp. 344:25-346:7 (T of Mother) She testified that informed consent, in her view, requires a clear understanding of what is proposed, answers to her questions, and sufficient

information to make a decision in Student 's best interest, and she expressed concern about unnecessary evaluations and the impact of labeling. T vol. 2 pp. 347:4-348:5 (T of Mother).

B. Information Provided to Mother in 2025

82. In 2025 the Team informed Mother that "it is not necessarily about the standardized scores, it is about seeing what he can do." Stip. Ex. 7 p. 52. Notwithstanding that statement, Ms. Zangwill confirmed she was proposing assessments to obtain standardized scores. Stip. Ex. 7 p. 52; T vol. 1 p. 158:19-21 (T of Zangwill). Ms. Zangwill told Mother she was not seeking a full-scale IQ (FSIQ) but would administer standardized subtests not impacted by verbal or fine motor deficits. Stip. Ex. 23 at 1:19:38-1:21:55. She acknowledged, however, that she could glean a nonverbal IQ score and that subtests produce cognitive scores. T vol. 1 pp. 116:23-117:1; 142:4-6, 9-12 (T of Zangwill). Although she stated she would not administer subtests impacted by motor skills, she later testified that at least one proposed subtest would be affected, with a modification permitting Student to verbalize responses. T vol. 1 pp. 158:7-10; 176:1 (T of Zangwill). Ms. Zangwill did not explain to Mother the distinction between an IQ score and other cognitive measures, though she testified she could have done so. T vol. 1 p. 142:13-21 (T of Zangwill).

83. At the April 2025 meeting, Mother testified she asked the same questions that she had raised in 2024. T vol. 2 p. 350:18-21 (T of Mother). She had questions regarding the nature of the newly proposed assessments, their implementation, normative samples (including whether they were normed for children with Down syndrome and autism), risks and benefits, alternative measures, and how results would translate into programming. T vol. 2 pp. 350:21-351:3 (T of Mother). She testified she did not receive answers to those questions. T vol. 2 p. 351:4-5 (T of Mother). Ms. Zangwill testified that in deciding whether Mother should consent, she identified the specific instruments and subtests she intended to administer. T vol. 1 p. 104:20-25 (T of Zangwill). When Mother asked how cognitive and educational assessments were needed and how results would affect service delivery, the Team provided generalized responses referencing working memory, comparison to same-age peers, and a hypothetical math goal, which Student already had. Stip. Ex. 7 p. 52; Stip. Ex. 23 at 1:39:45–1:41:30; 1:47:20–1:48:15.

84. The Team discussed allowing Mother to research proposed assessments and consent to specific subtests. Dr. Boyd stated the school would "honor" the parents' request for subtests. Stip. Ex. 23 at 1:59:40–1:59:55; T vol. 1 p. 143:1-5 (T of Zangwill). Shortly thereafter, Board counsel expressed concern about a "piecemeal" approach and the inability to obtain composite scores, Stip. Ex. 23 at 2:02:08–2:02:58, and suggested a single consent or withholding of consent, rather than selecting individual assessments. Stip. Ex. 8. The Prior Written Notice ultimately reflected that permitting consent to individual subtests would limit the school psychologist's

clinical judgment. Stip. Ex. 7 p. 52. The record reflects that before counsel's advice, the Team had agreed to provide names of assessments and subtests and permit consent to some or all requested evaluations, as well as to provide composite scores derived from selected subtests.

85. The Team also discussed documenting specific assessments and subtests on the consent form and, if additional assessments were needed during testing, generating an additional consent form. Stip. Ex. 7 p. 52; Stip. Ex. 23 at 2:09:15–2:10:30. The consent forms admitted into evidence, however, do not reflect this procedure, and Ms. Zangwill testified that documenting different batteries of tests "did not happen." Stip. Exs. 9, 12; T vol. 1 p. 106:12-14 (T of Zangwill). Ms. Zangwill also stated she would attempt standardized evaluation first and then look at other measures but did not inform the Family whether standardized scores would be reported or only other measures. Stip. Ex. 7 p. 52. She testified she began considering which evaluations to propose at a February 2025 meeting of school-based Team members without the parents. Stip. Ex. 23 at 2:03:00–2:03:40.

86. On the same day as the April 2025 meeting, Mother signed consent for a Medical Evaluation, Functional Behavioral Assessment, and Assistive Technology Evaluation. Stip. Ex. 9; Stips. 16-17. On April 30, 2025, Ms. Zangwill emailed Mother identifying proposed tests and subtests for the psychological, educational, adaptive behavior, and autism-related behavior assessments, after conferring with Board counsel. Stip. Ex. 10 pp. 58-59; T vol. 1 p. 154:4-22 (T of Zangwill). Mother researched the evaluations and, on May 14, 2025, consented to the autism-related behavior assessment, advising she was still researching the remaining evaluations in an effort to make an informed decision. Stip. Ex. 10 pp. 60-61; T vol. 3 p. 354:2 (T of Mother). On May 15, 2025, she asked why the ABAS was selected over the Vineland. Stip. Ex. 10 p. 67. The email record contains multiple redactions, and Ms. Zangwill testified she forwarded Mother's question to Board counsel for input. Stip. Ex. 10 p. 71; T vol. 1 p. 159:16-22 (T of Zangwill). Ms. Zangwill responded on May 21, 2025, and on May 23, 2025, Mother agreed to the ABAS and returned a signed consent form for two additional assessments. Stip. Ex. 10 p. 91; Stip. Ex. 12; Stip. 18. Neither consent form includes the specific assessments and subtests referenced in the Prior Written Notice. *Compare* Stip. Exs. 9, 12 *with* Stip. Ex. 7 p. 52.

87. The final communication regarding consent occurred on May 27, 2025, when Mother acknowledged receipt of the second consent form. Stip. Ex. 10 pp. 102-03. The record contains no additional evidence of attempts to obtain consent for the remaining evaluations. The Board presented no evidence that Mother affirmatively refused consent to the remaining evaluations beyond the stipulated refusal of the psychological evaluation, including a cognitive measure, and the educational evaluation. Stip. 19. Mother testified she was unable to provide informed consent for those evaluations because she lacked sufficient information, including information regarding alternatives to standardized measures not normed for Student 's profile

and how the proposed evaluations would be used to inform Student's programming. T vol. 3 p. 354:2-12; T vol. 2 p. 354:14-20 (T of Mother)

88. During the hearing, multiple psychologists testified regarding informed consent. Dr. Deni distinguished between general consent and informed consent, explaining that informed consent requires advising the parent what is planned and ensuring the parent understands how the evaluation will inform educational decision-making. T vol. 2 p. 315:3-7, 12-18 (T of Deni). Ms. Zangwill could not recall whether she had training on informed consent. T vol. 1 p. 147:19-21 (T of Zangwill) Dr. Anthony testified it was unclear from the IEP meetings what the Team was seeking from the proposed assessments and opined that the contribution of cognitive or educational testing would be minimal given other available information; she further testified that scores affected by floor effects would remain in Student's record. T vol. 3 pp. 431:14-19; 438:4-8; 439:14-24 (T of Anthony).

89. Dr. Burnette testified that informed consent requires consideration of risks, benefits, and the value of the information to be obtained, that parents should have the right to decide whether their child is evaluated in particular areas—especially where tests may not be accurate for students with complex needs—and that it was reasonable for Mother to ask how results would be used and what decisions might follow. T vol. 3 pp. 470:19-471:23 (T of Burnette). Dr. Burnette further testified that, based on her review of the April 2025 meeting recording, the Team's responses emphasized a generalized need for information but did not provide specificity as to intended use. T vol. 3 pp. 471:24-472:2; 472:21-473:1 (T of Burnette).

II. WHETHER THE REQUESTED EVALUATIONS ARE "APPROPRIATE" FOR STUDENT'S EDUCATIONAL PROGRAMMING

A. Ethical Obligation to Select Appropriate Assessment

90. During the hearing the Parties presented testimony from three (3) psychologists, Dr. Deni, Ms. Zangwill, and Dr. Anthony. The Board attempted to distinguish the role of a school psychologist and a clinical psychologist; however, the Undersigned found for the issues in this hearing, the difference in the role was of little import. The testimony of the psychologists was informative to the Undersigned in determining whether the requested evaluations, administered in accordance with the IDEA, were both "necessary and appropriate" for Student

91. Dr. Deni testified that psychologists are ethically required to select assessment instruments that are appropriate for the individual student being evaluated. (T Vol. 2 p. 283:12–14) (T of Deni). He further testified that the IDEA requires that evaluations be "valid and reliable." (T Vol. 2 p. 282:2–10). Dr. Deni explained that validity and reliability encompass two distinct considerations: (1) whether the instrument itself is valid and reliable, and (2) whether the instrument

was administered in a valid and reliable manner. (T Vol. 2 p. 284:16–20) (T of Deni). He further testified that evaluation reports should state whether, in the psychologist's professional opinion, the results are valid and reliable so that future evaluators may understand any limitations. (T Vol. 2 p. 284:1–15) (T of Deni).

92. Dr. Anthony testified that validity includes construct, content, and criterion-related validity, and that publishers bear responsibility for ensuring that a test measures what it purports to measure. T vol. 3 pp. 401:20–402:3 (T of Anthony). She testified that psychologists must consider validity both before and after administration and should select instruments likely to produce valid results for the individual being assessed. T vol. 3 p. 430:14–24 (T of Anthony). By way of example, Dr. Anthony testified that she would not administer an IQ test to Stephen Hawking because she would anticipate that the test would not be appropriate for him. T vol 3 p 430:14-20 (T of Anthony).

93. Dr. Anthony testified that her process for selecting appropriate instruments begins with a comprehensive psychological, psychiatric, social, and developmental history obtained from parents; review of prior evaluations; and consultation with teachers and school personnel. T vol. 3 pp. 395:6–21 (T of Anthony). She explained that she considers documented motor, speech, attention, behavioral, and fatigue-related issues when determining which measures to use, how many sessions to schedule, and whether selected tasks minimize motor or time demands. T vol. 3 pp. 397:2–18 (T of Anthony).

94. Similarly, Ms. Zangwill testified that she determines which instruments to use based on her observations of Student and Student's profile. T vol. 1 pp. 42:16–41:1; 43:15–20 (T of Zangwill).

B. Test Manuals and Psychometric Information

95. The psychologists testified that standardized assessments are accompanied by both administration manuals and psychometric (technical) manuals. The administration manuals prescribe the precise wording, directions, permissible prompts, time limits, and testing conditions required for standardized administration. The psychometric manuals provide detailed information regarding the instrument's validity, reliability, and normative sample. T vol 2 p 292:2-3 (T of Deni) (testifying the *WISC-V* has both an "administration manual" and a "psychometric manual"); T vol 3 p 392:6-11 (T of Anthony) (testifying she reviewed "both the administration manuals and the technical manuals for all of the psychological tests that were either currently or formerly proposed by the school system"; T vol 1 pp 138:19-20; 139:13-14 (T of Zangwill) (testifying in preparation for her testimony she "looked at manuals for some of the tests [she] proposed," more specifically she reviewed manuals for the "WISC-V, the DAS-II, [and] the WIAT-4"); T vol 2 p 292:4-6 (T of Deni) (The "psychometric manual is going to report

. . . everything . . . you could ever want to know . . . about the psychometrics of that instrument."); T vol 2 p 293:12-14 (T of Deni) ("the psychometric manual. . . would give us knee-deep information on validity and reliability"); T vol 1 pp 139:18-23; 140:16-24 (T of Zangwill) (testifying she had read the portion of the *WISC-V* manual that pertained to testing students with disabilities in the past but did not consult it before recommending subtests for Student); T vol 2 pp 310:6-7, 310:18-311:5 (T of Deni) (Dr. Deni was unaware if the WISC-V manual provides guidance on administration of the test to students with speaking deficits or motor impairments or whether students with motor impairments were excluded from the norming sample without reviewing the manual).

96. Ms. Zangwill testified that she had previously reviewed portions of certain manuals, including the section of the WISC-V addressing Student's disabilities, but did not consult that section prior to recommending subtests for Student. T vol. 1 pp. 139:18–23, 140:16–24 (T of Zangwill). Dr. Deni testified that, without reviewing the manual, he was unaware whether the WISC-V provides guidance for Student with speaking deficits or motor impairments or whether such Students were excluded from the norming sample. T vol. 2 pp. 310:6–311:5 (T of Deni).

97. None of the manuals were admitted into evidence. Accordingly, the Undersigned makes no findings as to the specific contents of any manual. However, there was no dispute as to the existence of such manuals, the type of information they contain, or their importance in selecting appropriate instruments. T Vol. 2 p. 293:19–21 (T of Deni).

C. Standardization, Floor Effect, and Norming Samples

98. Dr. Anthony provided detailed testimony regarding standardized testing.[3] She explained that standardization requires strict adherence to the publisher's instructions, including exact wording, timing, and administration conditions. Deviation from those procedures renders the administration technically invalid for purposes of standardized scoring. T Vol. 3 pp. 397:21–399:15 (T of Anthony). By example, Dr. Anthony testified that if a subtest requires a written response, accepting a verbal response would constitute a deviation from standardization. T Vol. 3 p. 398:13–17 (T of Anthony).

[3] Dr. Anthony testified she has conducted standardized assessments on children with complex needs. She stated that in such cases she advises at the outset that the assessment may be limited and that she may be unable to obtain a complete set of test results. She further testified that, in those circumstances, she describes the limitations of the administration and the interpretation of results in her reports, may report scores with cautionary language, and may indicate that the scores may not accurately represent the child's abilities. T vol 3 pp 426:15-427:3 (T of Anthony).

99. Dr. Anthony further testified that psychologists may administer tests in a non-standardized manner to obtain qualitative information; however, scores derived from such administrations are not considered valid standardized scores. T vol. 3 p. 399:5–15 (T of Anthony). She further testified that it is standard practice to document any deviations from standardization in an evaluation report, although psychologists differ in how they report such deviations. T Vol. 3 pp. 427:4–428:5 (T of Anthony).

100. Dr. Anthony further explained the concept of a "floor effect," whereby low-performing students may receive identical or artificially low scores because the lowest scaled score encompasses a broad range of raw scores.[4] In such cases, the resulting scores may not meaningfully differentiate ability levels or provide qualitative insight into the child's functioning. T Vol. 3 pp. 399:16–400:21 (T of Anthony).

101. Both Dr. Anthony and Dr. Deni testified regarding the development of normative samples. Test publishers establish large normative samples designed to reflect national census data, including racial, ethnic, geographic, and demographic representation. T Vol. 3 pp. 400:24–401:16 (T of Anthony); T Vol. 2 p. 292:8–12 (T of Deni). Likewise, both experts testified that normative samples include exclusionary criteria. T vol. 3 pp. 401:16–402:23 (T of Anthony); T vol. 2 pp. 292:16–18 (T of Deni). Dr. Anthony testified that such exclusions may include significant psychiatric conditions, severe sensory or motor impairments, or medical conditions that could affect performance. These exclusions are intended to ensure that members of the normative sample can complete the test as standardized without confounding variables. T vol. 3 pp. 402:4–23 (T of Anthony).

102. Dr. Deni testified that, ethically, psychologists must consider whether the student being evaluated is represented within the normative population when selecting assessment instruments. T Vol. 2 pp. 283:10–16; 292:24–293:2 (T of Deni).

D. Selection of Evaluation Instruments and Student's Unique Circumstances

103. In a school setting, the IEP Team—including the parent—determines what evaluations are necessary, and the school psychologist selects the instruments

[4] For example, she stated that "a subtest has a scaled score of 1 to 19. A child can earn a 1 because they earn 0 points or they earn . . . depending on the individual subtest, they might earn up to five to seven points. There's ranges for what equals a one. That range is very high. So, at the floor that is saying sometimes children, when they're only getting ones and it's the way the test is developed, if their constellation of weaknesses results in too many of those low scores, you're not getting a true representation of their abilities. You're not getting qualitative information. You're getting a low number that's not fully meaningful for that child." T vol 3 pp 399:16-400:21 (T of Anthony).

to be used, in a process designed to be collaborative. T Vol. 2 pp. 296:10–25 (T of Deni); T Vol. 1 pp. 68:3–69:13 (T of Zangwill).

104. Dr. Anthony testified that, in selecting instruments, she begins with a comprehensive review of the child's psychological, psychiatric, social, and developmental history; prior evaluations; and input from teachers and school personnel. She testified that she considers motor impairments, speech impairments, attention, fatigue, age, and other characteristics in determining which tests to administer and how many sessions are appropriate. T Vol. 3 pp. 395:6–397:18 (T of Anthony).

105. Ms. Zangwill testified that she selects instruments based on her observation of the student and the student's profile. T Vol. 1 pp. 42:16–43:20 (T of Zangwill).

106. Dr. Anthony testified that, in evaluating Student, she would consider his partial hearing loss, fine motor impairments, low muscle tone, attention difficulties, behavioral issues, receptive and expressive language delays, and attention span. T Vol. 3 pp. 403:20–404:3 (T of Anthony). Dr. Anthony also testified that Student's medical conditions, including insulin regulation and thyroid issues, could affect alertness, fatigue, concentration, and focus and would therefore need to be considered. T Vol. 3 p. 404:4–11 (T of Anthony).

107. Dr. Anthony and Dr. Deni both testified that Student has impairments in speaking, manual skills, and sensory functioning. T Vol. 2 pp. 306:19–307:11 (T of Deni); T Vol. 3 pp. 404:16–405:8 (T of Anthony). Dr. Anthony testified that none of the proposed cognitive measures included children with Student's profile in their normative samples. T Vol. 3 p. 405:15–16 (T of Anthony).

108. Dr. Anthony testified that administering assessments known to be impacted by Student's disabilities risks the IEP Team placing undue weight on scores that do not accurately reflect his abilities. T Vol. 3 p. 419:15–23 (T of Anthony).

E. Appropriateness of the Requested Psychological Evaluation with a Cognitive measure

109. In 2022, the Board's school psychologist, Kimerly Pawlicki, reported the IEP Team "determined that a cognitive assessment would not be administered due to the unreliability and poor validity with regard to results based on [Student]'s diagnoses of Down Syndrome and Autism Spectrum Disorder." Stip. Ex. 2 p. 12.

110. Instead, Ms. Pawlicki conducted evaluations in adaptive behavior, autism-related behaviors, and functional behavioral analysis. She administered the Vineland-3 Adaptive Behavior Scales and the Autism Spectrum Rating Scales,

relying on parent and teacher input to identify mastered and emerging skills and areas of need. Stip. Ex. 2 pp. 13–19.

111. At the triennial reevaluation meeting on April 28, 2025, the School Team requested a psychological evaluation with a cognitive measure. The IEP Team again noted that a cognitive assessment had not been administered in 2022 due to concerns regarding validity and reliability. Stip. Ex. 6 p. 39.

112. Ms. Zangwill proposed administering the DAS-II, WISC-V, and C-TONI as cognitive measures. T Vol. 1 pp. 111:16–112:4 (T of Zangwill); Stip. Ex. 10 p. 58. She testified that cognitive assessments measure problem-solving, working memory, processing speed, verbal reasoning, nonverbal reasoning, and spatial reasoning. T Vol. 1 pp. 74:13–76:3 (T of Zangwill).

113. Ms. Zangwill testified she would select subtests intended to reduce barriers related to verbal reasoning and fine motor skills. T Vol. 1 pp. 111:21–112:1 (Zangwill). However, she acknowledged that the assessments were not normed on students with Student's profile and that she was seeking a standardized measure for comparison to non-disabled peers. T Vol. 1 p. 166:13–20 (Zangwill). Ms. Zangwill testified that she did not know whether such testing would result in valid and reliable estimates of Student's cognitive functioning and that it would depend on how he presented at the time of testing. T Vol. 1 p. 119:21–25 (Zangwill).

114. When asked whether any cognitive measure could be administered in strict accordance with publisher instructions without reflecting Student's sensory, manual, or speaking impairments, Dr. Anthony testified that all cognitive tests would be impacted in some way by his impairments. T Vol. 3 p. 414:21–23 (T of Anthony). Dr. Anthony testified that specific proposed subtests, including timed subtests such as Figure Weights and Visual Puzzles, require responses within thirty seconds and would disadvantage Student T Vol. 3 pp. 406:13–407:15 (T of Anthony). Dr. Anthony opined that administering a standardized cognitive assessment in strict accordance with publisher instructions would not yield information sufficient to guide Student's educational programming, given his unique circumstances. (T Vol. 3 pp. 415:4–416:4).

115. Dr. Deni testified that obtaining additional data, including a cognitive assessment, would be generally beneficial, but he did not opine as to whether the proposed testing instruments were appropriate for Student's specific profile. T Vol. 2 p. 301:11–25 (T of Deni).

F. Appropriateness of Requested Educational Evaluation

116. Ms. Pawlicki previously reported that a norm-referenced standardized achievement assessment was not conducted due to limited reliability and validity for

students with Autism Spectrum Disorder and Down Syndrome. Stip. Ex. 2 p. 7. Instead, the IEP Team relied on curriculum-based data from Student's teacher.

117. Testimony established that educational evaluations typically measure reading, writing, and mathematics skills and that norm-referenced measures compare a student to same-age peers. T Vol. 2 pp. 288:7–289:20 (T of Deni); T Vol. 1 pp. 42:2–15; 74:7–9 (T of Zangwill).

118. In 2024 Ms. Zangwill indicated an educational evaluation "is not limited to only standardized assessments." Pet'r. Ex. 27 p 309. At hearing, however, she testified that she was seeking administration of a standardized measure.

119. Ms. Zangwill identified the Wechsler Individual Achievement Test-Fourth Edition (WIAT-4) as the proposed instrument for the educational evaluation. T vol 1 p 113:8-9 (T of Zangwill); Stip. Ex. 10. p 58.

120. Although Ms. Zangwill testified that she would remove barriers for Student in cognitive testing, she proposed multiple timed fluency subtests in the educational measure, including oral reading, orthographic, and decoding fluency. T Vol. 1 pp. 114:9–22; 155:22–156:4 (T of Zangwill)

121. Dr. Anthony testified that Student's IEP provides for a 15-second response latency and that timed fluency tasks requiring immediate responses within 30 seconds would place him at a disadvantage and not accurately reflect his decoding ability. T Vol. 3 pp. 406:4–407:1 (T of Anthony).

122. Dr. Anthony identified issues with the proposed timed assessments, giving specific examples of the issues with "any of the fluency tasks on the WIAT[,]" "visual puzzles on the WISC, figure weights on the WISC" would be impacted by his known disabilities. T vol 3 p 406:13-16 (T of Anthony). Dr. Anthony testified that subtests requiring written or verbal output, such as Numerical Operations, would be impacted by Student's motor and speech impairments, and that altering response formats would deviate from standard protocol. [5] T Vol. 3 pp. 407:22–408:5 (T of Anthony).

123. Dr. Anthony opined that scores obtained from the proposed standardized educational assessments would likely reflect the negative impact of Student's deficits rather than his true academic abilities and would not be

5 Dr. Anthony further noted an issue with the numerical operations subtest of the WIAT because "it would require [Student] to write his answers or say them out loud . . . If you're allowing oral responses . . . that would be off standard protocol." T vol 3 pp 407:22-408:5 (T of Anthony).

appropriate to inform his educational programming. T Vol. 3 pp. 410:17–23; 411:4–7; 414:9–13 (T of Anthony).

124. When asked whether it would be appropriate to conduct an educational evaluation on Student, Dr. Deni testified it would be because he didn't "honestly know how you could ever do . . . any educational program . . . for [Student] unless you had an educational assessment data." T vol 2 p 303:13-15 (T of Deni).

III. WHETHER THE REQUESTED EVALUATIONS ARE NECESSARY FOR STUDENT'S EDUCATIONAL PROGRAMMING

A. Discussions Regarding the Necessity of a Cognitive Evaluation in 2022

125. Student's IEP Team convened on September 22, 2021, to conduct his triennial reevaluation. Mother attended and participated. T vol. 2 pp. 334:9–12 (T of Mother). During this meeting, discussion regarding a psychological evaluation included reference to the possibility that a cognitive evaluation might become relevant when Student reached age eighteen in connection with SSI disability benefits. The school psychologist indicated such an evaluation would not be necessary for developing or creating the IEP. T vol. 2 pp. 336:16, 337:21–338:2.

126. The IEP Team determined that a cognitive evaluation was not necessary to determine eligibility under the categories of Autism (AU) and Other Health Impairment (OHI). Resp't Ex. 1 pp. 3, 20. Mother consented to the psychological evaluation that was proposed. T vol. 2 pp. 338:3–5 (T of Mother).

127. A cognitive evaluation is not a required component for eligibility under the IDEA or North Carolina law for AU or OHI. See 34 C.F.R. § 300.8(c)(1)(i); § 300.8(c)(9); N.C. 1503-2.5(d)(1)(I); 1503-2.5(d)(10)(i).

128. On February 2, 2022, the IEP Team reconvened for eligibility determination. Mother attended and participated. Resp't Ex. 1; T vol. 2 pp. 333:20–21 (T of Mother). At that time, Student was receiving instruction primarily in a segregated setting. T vol. 2 pp. 339:21–23 (T of Mother).

129. The IEP Team concluded that conducting a cognitive evaluation would not yield valid or reliable results due to Student's diagnoses of Down syndrome and autism spectrum disorder. (Stip. Ex. 2 p. 12). Instead, the school psychologist administered adaptive behavior assessments, autism assessments, and a functional behavioral analysis. *Id.*

130. The IEP Team relied on progress monitoring data from Student's existing IEP goals to develop new and more ambitious goals. Resp't Ex. 2 pp. 33–46, 49–53.

131. In 2022, as in later years, the IEP Team documented that Student experienced difficulties with attention and demonstrated deficits in reading, math, written expression, fine motor skills, behavior, social skills, and communication. Resp't Ex. 2.

B. Discussions Regarding the Necessity of a Cognitive Evaluation in 2024

132. Mother testified that the first two IEP meetings in 2024, during which goals were developed, were collaborative and proceeded without disagreement. T vol. 2 pp. 342:2–7 (T of Mother). Goals included math and reading objectives.

133. No discussion of a cognitive evaluation occurred during those initial meetings. The first mention of a cognitive evaluation arose during the February 26, 2024 IEP meeting, after goals had already been developed. T vol. 2 pp. 342:8–22 (T of Mother).

134. At that meeting, Ms. Zangwill stated she wished to examine Student's cognitive strengths and needs through a cross-battery approach to obtain a cognitive profile to inform programming. (Pet'r Ex. 25 p. 246). Ms. Zangwill did not explain the meaning of "cognitive profile." T vol. 1 pp. 142:13–21 (T of Zangwill).

135. At the time of this discussion, Student was not due for reevaluation for approximately eleven months. T vol. 1 pp. 85:25–86:2 (T of Zangwill); Pet'r Ex. 27 p. 309).

136. When asked whether the Team lacked information in any specific area, no particular deficit was identified. The Team stated generally that assessments would provide additional information and assist in developing IEP goals. Pet'r Ex. 27 p. 309.

137. Although Board witnesses later testified that cognitive testing was needed to compare Student to peers, contemporaneous documentation reflected that data already existed to compare him to third-grade students following the standard course of study. For comparisons to students following extended content standards, individualized IEP goals would need to be reviewed. Pet'r Ex. 25 p. 246; T vol. 1 pp. 166:13–20 (Zangwill).

138. Mother and her educational consultants expressed concern that proposed assessments were not normed for students with Student's disability profile and would not yield valid results. Pet'r Ex. 27 pp. 309–10.

139. The school team indicated that reevaluation for eligibility purposes would be discussed at a subsequent meeting and that this could include discussion of cognitive and educational testing. Pet'r Ex. 27 p. 310.

140. The Team formally proposed reevaluation for programming purposes but requested consent only for Adapted P.E. and observations. Mother consented to those evaluations. Pet'r Ex. 27 p. 310; Pet'r Ex. 28 p. 362. The Team did not document that cognitive or educational testing was required for programming at that time.

C. Discussions Regarding the Necessity of a Cognitive Evaluation in 2025

141. On April 28, 2025, the IEP Team convened for Student's triennial reevaluation. Stip. 14. Mother understood the meeting to address eligibility. T vol. 2 p. 350:8 (T of Mother).

142. Student's eligibility categories remained AU and OHI. No new area of suspected disability was identified, and no change in eligibility category was proposed. A cognitive evaluation was not required for those categories. T vol. 1 pp. 103:3–6 (Zangwill).

143. The Team proposed multiple evaluations, including assistive technology, health and vision screening, educational evaluation, functional behavior assessment, medical evaluation, psychological evaluation, adaptive behavior evaluation, and autism-related observations. T vol. 1 pp. 103:9–14 (Zangwill); Stip. Ex. 6.

144. The Team did not identify any new concerns warranting a cognitive evaluation. Stip. Ex. 7. As of April 28, 2025, no new observational data had been collected. Stip. Ex. 6 p. 47.

145. For the first time, the school-based Team stated that cognitive and educational evaluations were needed for "Programming: Development of the Individualized Education Program," specifically to inform Present Levels and determine whether services required modification. Stip. Ex. 6 pp. 47–48.

146. When Mother asked what specific information required a cognitive evaluation, Ms. Zangwill stated she sought information about working memory, referencing subtests such as Picture Span of the WISC-V. Stip. Ex. 23 at 1:21:45–1:22:56.

147. During the hearing, Board witnesses cited the need to determine Student's cognitive functioning level, processing speed, working memory, visual-spatial skills, and comparison to peers. T vol. 1 pp. 112:17–113:5 (T of Zangwill); 209:11–13 (T of Special Education Teacher).

148. Special Education Teacher testified that evaluations would provide additional information regarding Student's abilities and deficits. However, Ms. Zangwill testified that the only information uniquely obtainable from standardized

assessment was comparison to same-age peers. T vol. 1 p. 42:2–15 (T of Zangwill). No evidence showed that this distinction was explained to the IEP Team.

149. When asked how information regarding processing speed or working memory would be used in programming, Board witnesses were unable to provide specific examples. T vol. 2 pp. 253:8–254:2. Special Education Teacher acknowledged she was already aware of Student's latency. T vol. 2 p. 251:22 (T of Special Education Teacher).

150. Dr. Burnette testified that if concerns existed regarding working memory or processing speed, alternative methods were available to gather relevant information without administering a cognitive evaluation. T vol. 3 pp. 462:20–463:15 (T of Burnette).

151. Evidence established that progress monitoring, classroom-based assessments, curriculum-based measures, and IEP goal data had been collected consistently for multiple years. Stip. Ex. 6 pp. 27–31, 42–44.

152. The Board's witnesses repeatedly emphasized the need for a "number" or "score" to compare Student to same-age peers. T vol. 1 pp. 115:12–20; 119:11–15 (T of Zangwill); T vol. 2 p. 253:2–3 (T of Special Education Teacher). When asked what information a cognitive evaluation would provide that could not otherwise be obtained, the consistent response was that it would yield a standardized comparison to non-disabled peers. (T vol. 1 pp. 166:6–12).

153. Mother requested that the Team rely on progress monitoring and classroom data; she was told such data would not provide a "cognitive number." T vol. 2 pp. 373:2–9.

154. Dr. Burnette opined that standardized cognitive measures are not normed for students with complex support needs such as Student and would not provide accurate information for programming. T vol. 3 pp. 475:1–16 (T of Burnette).

155. Dr. Deni testified that the most useful information from cognitive evaluations is often qualitative observational data, which could similarly be gathered in classroom settings. T vol. 2 pp. 286:18–287:2 (T of Deni); T vol. 3 p. 428:18–21 (T of Anthony).

156. Dr. Burnette testified that reliance on IQ scores alone should not drive educational decision-making, T vol. 3 pp. 478:1–18, and that progress monitoring provides a more accurate measure of Student's day-to-day abilities than standardized testing conducted in unfamiliar settings, T vol. 3 pp. 461:13–21; 466:1–19.

157. The evidence established that Student had made measurable progress on multiple IEP goals, including mastery of math goals, though performance was sometimes inconsistent. Stip. Ex. 7 p. 51; T vol. 2 pp. 260:18–261:12 (T of Special Education Teacher).

158. No IEP Team member previously indicated an inability to draft goals due to insufficient data. T vol. 2 pp. 244:13–18 (Special Education Teacher); 373:12–17 (T of Mother).

159. Dr. Burnette opined that the IEP Team possessed sufficient data to make educational decisions without additional cognitive or educational evaluations. T vol. 3 p. 479:5–7 (Burnette).

160. Based on the totality of the evidence, the primary rationale articulated for conducting a cognitive evaluation was to obtain a norm-referenced comparison to same-age peers. The record does not establish that such comparison was necessary for determining eligibility or developing Student's IEP.

D. *Discussions Regarding the Necessity of an Educational Evaluation in 2022*

161. Mother consented to an educational evaluation at the September 22, 2021 meeting. T vol. 2 pp. 338:6–11.

162. On February 2, 2022, the IEP Team determined Student met eligibility criteria for AU and OHI. Resp't Ex. 1 p. 29.

163. The school psychologist, Ms. Pawlicki, reported that a standardized educational evaluation was not conducted because results would not be valid or reliable for instructional decision-making. T vol. 2 pp. 339:9–12 (T of Mother); Stip. Ex. 2 p. 7).

164. The IEP Team instead relied on progress monitoring and IEP goal data to develop the annual IEP. Resp't Ex. 1 pp. 11–12.

165. The IEP Team in 2022 noted Student "participate[d] in school based assessment (mClass and fastbridge) but the results do not reflect [Student]'s abilities." Resp't. Ex. 1 p 1. Instead, the IEP Team relied on Student's progress monitoring on his IEP goals to create new, more ambitious goals. *Id.* pp 11-12.

E. Discussions Regarding the Necessity of an Educational Evaluation in 2024

166. In March 2024, an educational evaluation was suggested to identify gaps and assist with goal development. Pet'r Ex. 27 p. 309; T vol. 1 p. 217:12–14 (T of Zangwill).

167. Concerns were raised that standardized tests were not normed for students with Student's disability profile and would not yield valid results. (Pet'r Ex. 27 p. 309).

168. In May 2024, the IEP Team determined eligibility for Extended School Year services based on existing data without noting a need for standardized educational testing. Pet'r Ex. 28 p. 363.

169. Over the objection of Mother, Ms. SaraJo Soldovieri (CCPS Inclusion Consultant), and Jennifer Holmes, the school-based IEP team decided to "move [Student] to the extended content standards" for the 2024–25 school year. Pet'r Ex. 28 p. 366. This decision was made without reliance on data from the evaluations the Board seeks.

F. Discussions Regarding the Necessity of an Educational Evaluation in 2025

170. Ms. Zangwill testified generally that educational evaluations assist in IEP development but did not provide student-specific explanation. T vol. 1 pp. 76:11–14 (T of Zangwill). Ms. Zangwill provided no Student-specific testimony about what information could be gleaned for Student or how it would be used.

171. The IEP Team possessed extensive data, including grades, curriculum-based measures, state assessment percentiles, and multi-year progress monitoring. Stip. Ex. 6 pp. 25–31, 42–44.

172. The IEP Team documented both areas of inconsistency[6] and areas of measurable growth, including mastery of certain math goals. Stip. Ex. 7 p. 51.

173. When asked why an educational evaluation was necessary, Ms. Zangwill again cited comparison to same-age peers as the primary rationale. T vol. 1 pp. 121:14–25 (T of Zangwill).

174. Dr. Deni testified that norm-referenced measures are used primarily to compare students to peers, while curriculum-based measures better reflect functional performance. T vol. 2 pp. 289:1–18 (T of Deni).

[6] The IEP Team reported Student's progress on his IEP goals "[b]ased on the IEP Implemented on 5/15/2024." Stip. Ex. 6 pp 42-44. The IEP Team noted the inconsistencies in [Student's] scores were based on "behaviors and task avoidance," which impacted his ability to demonstrate mastery. *Id.*; Stip. Ex. 7 p 51. The IEP Team also documented Student's growth, and the IEP Team's introduction of new skills based on his mastery. *Id.*

175. Expert testimony established that Student's latency and verbal deficits would affect both curriculum-based and norm-referenced timed assessments. T vol. 3 p. 464:17–18 (T of Burnette).

176. Dr. Burnette opined that an educational evaluation was neither necessary nor appropriate for Student's programming and that more accurate and relevant information was already available to the Team. T vol. 3 pp. 476:11–23 (T of Burnette).

177. Based on the evidence presented, the IEP Team had sufficient evaluative and progress monitoring data to develop appropriate goals and make educational decisions without conducting additional standardized cognitive or educational evaluations.

CONCLUSIONS OF LAW

Based upon the above findings of fact, stipulations of the Parties, relevant laws, regulations, and legal precedent, and by a preponderance of the credible evidence, the Undersigned concludes as follows:

1. To the extent the foregoing Conclusions of Law contain Findings of fact or that the Findings of Fact are conclusions of Law, they are intended to be considered without regard to their given labels. *Charlotte v. Heath,* 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C.App. 376, 41 377, 707 S.E.2d 724, 735 (2011); *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. denied* 366 N.C. 408, 735 S.E.2d 175 (2012).

Parties

2. The Parties agreed to Party Stipulations in the December 10, 2025, Prehearing Order.

Jurisdiction

3. The Office of Administrative Hearings has jurisdiction over claims relating to the identification, evaluation, educational placement, or provision of a free appropriate public education ("FAPE") pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq. and implementing regulations, 34 C.F.R. Part 300.

4. Specifically, the Office of Administrative Hearings has jurisdiction over this matter under IDEA, 20 U.S.C. § 1415(f) and N.C. Gen. Stat. § 115C-109.6(a).

5. The Parties agreed to Jurisdiction in the December 10, 2025, Prehearing Order. Docket Entry 12/10/25: Order on Final Pre-Hearing Conference.

6. The IDEA is the federal statute governing the education of students with disabilities. The Federal regulations promulgated under IDEA are codified at 34 C.F.R. Part 300. The controlling State law for students with disabilities is Chapter 115C, Article 9 of the North Carolina General Statutes.

7. Student is a "child with a disability" as defined by IDEA and is entitled to a free appropriate public education, which includes certain procedural safeguards.

8. The Board is a local educational agency ("LEA") responsible for evaluating Student

9. The Parties are properly before the undersigned Administrative Law Judge, and jurisdiction and venue are proper. The North Carolina Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The Parties received proper notice of the hearing in this matter.

Burden of Proof

10. The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); Schaffer v. Weast (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Though there is limited precedent addressing when a school district may override parental refusal of consent for evaluations under the IDEA, and the Undersigned has identified no controlling standard with the Fourth Circuit directly governing such circumstances, the Parties agreed the standard in this matter is whether the requested evaluations are both "necessary and appropriate." Because the Board filed the due process complaint, it had had the burden of proof.

11. Moreover, the Administrative Law Judge must decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

North Carolina Rules of Evidence

12. The North Carolina Rules of Evidence in Chapter 8C of the General Statutes govern all contested case proceedings before this Tribunal. N.C. Gen. Stat. §150B-29; 26 NCAC 03.0122 (1). All evidence admitted into the official record that has probative value must be considered by the Administrative Law Judge and has been considered by the undersigned in this case. 26 NCAC 03.0122 (1) and (2).

Testimony of Expert Witnesses

13. The testimony of expert witnesses must be based on sufficient facts or data, the product of reliable principles and methods, and these principles and methods must be applied reliably to the facts of the case. N.C. Gen. Stat. § 8C-1, Rule 702(a). The opinions of expert witnesses, which were based on sufficient facts, were the product of reliable principles and methods and the reliable application of reliable principles and methods were given significant weight. See N.C. Gen. Stat. § 8C-1, Rule 702.

I. INFORMED CONSENT

14. The Board seeks an order from this Tribunal to override Student's parents' refusal to conduct a psychological evaluation with a cognitive measure and an educational evaluation. The IDEA provides, as the Board chose to exercise here, the option of an LEA attempting to override parental consent by pursuing evaluations through a due process hearing. 34 C.F.R. § 300.300(c)(1)(ii). While there was no Prior Written Notice issued to document the parents' refusal to consent, the Parties stipulated that Mother refused to consent to a psychological evaluation, which included a cognitive measure, and an educational evaluation. Stip. 19. However, whether the Board provided the Family sufficient information to provide "informed consent," and thus avail itself of utilizing the consent override procedures of the IDEA, is a separate and threshold question.

15. For over a century, courts have repeatedly rejected the over-reach of state actors seeking to abrogate the rights of parents to direct the education and care of their children. *See, e.g., Meyer v. Nebraska,* 262 U.S. 390 (1923) (overturning a Nebraska law prohibiting parents from enrolling in schools providing instruction in languages other than English); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (overturning a state law requiring parents to send their children to attend public schools); *Stanley v. Illinois*, 405 U.S. 645 (1972) (overturning an Illinois law denying custody to unwed parents without neglect proceedings afforded to married parents); *Troxel v. Granville*, 530 U.S. 57 (2000) (upholding the unconstitutionality of a Washington law allowing a court override a parent's refusal of a grandparent's visitation of a child). "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this court." *Troxel*, 530 U.S. at 65.

16. A "child is not a mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce*, 268 U.S. at 535. North Carolina's legislature adopted the "Parent's bill of rights" memorializing this liberty interest and recognizing a parent's right to "direct the education and care of his or her child." N.C. Gen. Stat. § 114A-10(1) (2023).

17. Congress incorporated this same principle into the IDEA by requiring parents to provide "informed consent" before a school evaluates or provides special education and related services to a child. 20 U.S.C. § 1414(a)(1)(D)(i). Informed consent is "[a] person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives. For the legal profession, informed consent is defined in Model Rule of Professional Conduct 1.0(e)." Informed Consent, *Black's Law Dictionary* (12th ed. 2024); ABA R of Prof. Conduct 1.0(e) ("Informed consent" denotes the agreement by a person to a proposed course of action after the lawyer has communicated adequate information and explanation of the material risks and reasonably available alternatives to the proposed course of conduct.").

18. The federal regulations similarly define consent as a parent being "fully informed of all information relevant to the activity for which consent is sought . . . and agree[ing] in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activities and lists the records (if any) that will be released and to whom." 34 C.F.R. § 300.9(a)-(b). Consent must be "voluntary" and "may be revoked at any time." 34 C.F.R. § 300.9(c)(1). The IDEA's requirement to provide a parent with "all information relevant to the activity" recognizes the "high duty" the parent has when voluntarily choosing to give informed consent.

19. "A core principle throughout the IDEA is meaningful participation by parents and informed parental consent, making parents an integral part of the team that determines both whether the child is a child with a disability and the content of the child's IEP." *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842, 851 (9th Cir. 2014) (citing 20 U.S.C. §§ 1400(c)(5)(B), 1414(a)(1)(D), 1414(b)(4)(A); 34 C.F.R. § 300.306(a)(1)) (determining parents were not provided informed consent resulting in a denial of FAPE); *Murrieta Valley Unified Sch. Dist.*, 122 LRP 4075 at * 12-15 (CA SEA Jan. 13, 2022) (denying school's request to override parental consent because school district did not make reasonable efforts to gain parents' informed consent).

20. Courts distinguish refusals based on the lack of information provided to the parent from refusals based on the proposed evaluator or the "manner of reevaluation." *See G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1264 (11th Cir. 2012). In *G.J.*, the parent sent a long list of requirements for how the district needed to conduct the evaluation. *Id.* The Court found the district's notice which provided the opportunity to gather the information from the school district about "why" the child needs to be tested, to get more "details about the evaluation," to "request to know the exact time and place [the evaluation] will occur," and an "explanation of [the assessments] on the consent form" sufficient to establish the parent did not refuse based on lack of information. *Id.*; *In re: Student with a Disability*, 123 LRP 31701 at *7 (DE SEA Sept. 1, 2023) (overriding parental consent for a particular evaluator to conduct the evaluation after the district spent two (2) years meeting with

the parent to explain exactly "why" the evaluation was necessary and using neutral mediators during meetings).

21. The Undersigned notes that most cases where the court or hearing officer overrode parental consent, parents were unrepresented at the administrative hearing, and the procedural argument of "informed consent" was not raised. *See, e.g., Miami-Dade Cnty. Sch. Bd.*, 115 LRP 5622 at *1 (FL SEA May 19, 2014) (pro se parent); *Santa Fe Indep. Sch. Dist.*, 112 LRP 33649 at *1 (TX SEA May 23, 2013) (parent was represented by non-attorney "next friend"); *In re: Student with a Disability*, 123 LRP 31701 at *1 (DE SEA Sept. 1, 2023) (pro se parent); *Lake Washington Sch. Dist.*, 112 LRP 14683 at *1 (WA SEA Feb. 28, 2012) and *J.B. ex rel. B.B. v. Lake Washington Sch. Dist.*, No. C12-0574RSL, 2013 WL 195375 at *4 (W.D. Wa. Jan. 17, 2013) (pro se parent represented the student at administrative hearing and subsequently in district court); *Conroe Indep. Sch. Dist.*, 39 IDELR 199 (TX SEA July 9, 2003) (parent was represented by non-attorney "next friend" and informed consent was not raised, and the hearing officer's decision was affirmed in federal court); *Shelby S. ex rel Kathleen T v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454 (5th Cir. 2006)); *Shoreline Sch. Dist.*, 120 LRP 17304 at *1 (WA SEA Dec. 2, 2019) (parent appeared pro se at the administrative hearing and in federal court where the decision was upheld).

22. In cases identified by the Undersigned where courts and hearing officers refused to override parental consent, the parents were represented by counsel. *See, e.g., Suffield Bd. of Educ. v. L.Y.*, No. 3:12-CV-1026(JCH), 2014 WL 104967 at *1 (D. Conn. Jan. 7, 2014) (represented by counsel); *Penn. Virtual Charter Sch.*, 112 LRP 27522 at *1 (PA SEA May 5, 2012) (represented by counsel); *Pleasanton Unified Sch. Dist.*, 124 LRP 17161 at *16 (CA SEA May 29, 2024) (represented by counsel); *Murrieta Valley Unified Sch. Dist.*, 122 LRP 4075 at * 1 (CA SEA Jan. 13, 2022) (represented by counsel).

23. When a parent has failed to respond or has not affirmatively refused consent to a requested evaluation, the district is obligated to make reasonable efforts to obtain informed consent. 20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(2)(i). "To meet the reasonable efforts requirement in paragraph[] . . . (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in § 300.322(d)." 34 C.F.R. § 300.300(d)(5). Section 300.322 (Parental Participation) describes examples of the required procedures:

> (1) Detailed records of telephone calls made or attempted and the results of those calls;
> (2) Copies of correspondence sent to the parents and any responses received; and
> (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 C.F.R. § 300.322(d). "The burden to obtain informed consent rests with the school district, not the parents." *Murrieta Valley Unified Sch. Dist.*, 122 LRP 4075 at *14.

24. The Prior Written Notice "must include an explanation of why the agency proposes to evaluate a child; a description of each evaluation, procedure, assessment, record, or report the agency used as a basis for requesting the evaluation . . . a description of other options that were considered and why those reasons were rejected; and a description of other factors that are relevant to the agency's proposal to request consent for an evaluation." 71 Fed. Reg. 46641-42 (2006).

25. The Undersigned finds these requirements underscore the importance of parental participation and the duty to ensure that a parent's rights are not violated before the district takes any additional action to evaluate a child without his parents' informed consent.

26. The IDEA provides, as the Board chose to exercise here, the option of an LEA attempting to override parental consent by pursuing evaluations through a due process hearing. 34 C.F.R. § 300.300(c)(1)(ii). As noted above, however, whether the Board provided the Family sufficient information to provide "informed consent" is a threshold question.

27. Thus, in deciding whether the requested evaluations are "necessary and appropriate for purposes of educational programming for Student," the Undersigned evaluated the information the Board shared with the parents in seeking "informed consent," and subsequently this Tribunal, to determine whether the information provided was sufficient for the parents to provide "informed consent" and for this Tribunal to override the parent's "high duty," constitutional liberty interest, and State right to "direct the education and care of his or her child." Based on the information presented, the Undersigned finds it was not.

28. The record establishes that, from the outset of the parties' discussions regarding cognitive and educational testing, Mother consistently sought information necessary to provide informed consent. At every meeting in which the IEP Team proposed psychological or educational assessments, she asked, in some form or another, what the Team would "be getting out of" the evaluations, how the results would change or add to Student's programming, and what new information would be obtained. In both 2024 and 2025, she inquired about the specific instruments proposed, the reasons for their selection, whether they were normed on children with Student's profile of Down syndrome and autism, the risks and benefits of testing, possible alternatives, and how any results would translate into his day-to-day educational services. Her questions were reasonable, consistent, detailed, and directed toward understanding both the purpose and practical impact of the proposed evaluations.

29. Despite these repeated inquiries, the IEP Team's responses remained generalized and, at times, inconsistent. In 2024, the IEP Team indicated that testing would assist with identifying skill gaps, revisiting lower grade-level skills, and informing goal development, but did not clearly articulate how the results would alter Student's existing programming. In 2025, the IEP Team represented that "it is not necessarily about the standardized scores, it is about seeing what he can do," yet Ms. Zangwill confirmed that she was proposing standardized subtests to obtain standardized scores. Although she stated she was not seeking a full-scale IQ, she acknowledged that the subtests would yield cognitive scores and could produce a nonverbal IQ measure. The distinction between an "IQ score" and other cognitive measures was not explained to Mother, notwithstanding Ms. Zangwill's acknowledgment that she could have clarified that distinction. Such inconsistencies undermined the clarity necessary for informed decision making.

30. The information provided regarding the normative samples of the proposed instruments further demonstrates that Mother was not supplied with accurate or reliable information. The Team informed her that the WRAML and NEPSY were normed for autism and intellectual disabilities, though not for a dual diagnosis of autism and Down syndrome. Dr. Anthony testified that none of the proposed evaluations included children with Student's profile in their normative samples. Ms. Zangwill could not recall whether she provided the information attributed to her in the Prior Written Notice. Where a parent expressly conditions consent on understanding whether an instrument is normed for a child's disability profile, inaccurate or uncertain representations regarding normative samples are material to the consent inquiry.

31. The procedural posture adopted by the Team further constrained Mother's ability to provide informed consent. In March 2024, she was advised she could not consent to only part of a psychological evaluation but must either consent or refuse in its entirety. Although the Team later discussed permitting consent to specific subtests and initially indicated a willingness to honor such a request, that position shifted after recommendations against "picking individual assessments." The final Prior Written Notice reflected the Team's refusal to permit consent to individual subtests on the grounds that doing so would limit the school psychologist's professional judgment. The evidence demonstrates that the Team had earlier agreed to identify specific assessments and subtests and to allow consent to some or all components. This change reinforced Mother 's understanding that the proposal was "all or nothing," thereby limiting her ability to tailor consent to those measures for which she believed she had sufficient information.

32. Moreover, the consent process as implemented did not comport with the Team's own representations. The Prior Written Notice indicated that specific assessments and subtests would be documented on the consent form and that additional consent could be sought if further measures were deemed necessary during

testing. The consent forms admitted into evidence did not list the specific assessments and subtests as described. Ms. Zangwill acknowledged that the contemplated procedure of documenting specific batteries and subtests "did not happen." The failure to provide consent documents consistent with the IEP Team's stated plan deprived Mother of the concrete information necessary to evaluate precisely what she was being asked to authorize.

33. The testimony of multiple psychologists underscores the deficiency in the information provided. Dr. Deni distinguished between mere consent and informed consent, emphasizing that parents should understand not only why an evaluation is proposed, but how it will assist the team in making better educational decisions. Dr. Burnette also testified that informed consent requires consideration of risks, benefits, and the value of the information to be obtained, and that it is reasonable for a parent to ask how evaluation results will be used and what decisions may follow, particularly where research suggests standardized tests may not be accurate for students with complex support needs. Dr. Anthony opined that it was unclear from the IEP meetings what the Team sought to obtain from the proposed assessments and that their contribution to educational decision-making would be minimal, especially given the availability of other programming data. The Undersigned credits this testimony as consistent with the record of the IEP meetings, which reflects generalized statements about planning and comparison to same-age peers, but not a specific articulation of how the results would concretely change Student's services.

34. Finally, the record does not support a finding that Mother refused consent outright after having received sufficient information. Rather, the evidence demonstrates that she researched proposed instruments, consented to certain evaluations (including medical, FBA, assistive technology, autism-related behavior assessments, and adaptive behavior measures after receiving additional clarification), and continued to request information necessary to make an informed decision regarding cognitive and educational testing. The Board presented no evidence that she was provided with clear explanations of alternatives, the implications of floor effects, or how potentially invalid or minimally informative scores would be used in future eligibility or programming determinations. On this record, Mother 's decision not to consent to the psychological evaluation, including cognitive measures, and the educational evaluation reflects an inability to obtain the information necessary for informed consent, rather than an unreasonable refusal.

35. Accordingly, the preponderance of the evidence demonstrates that the Board did not provide Mother with sufficiently specific, accurate, and consistent information as to the nature, purpose, risks, benefits, and intended use of the proposed cognitive and educational evaluations to enable her to provide informed consent as contemplated under the IDEA and its implementing regulations.

II. WHETHER THE REQUESTED EVALUATIONS ARE NECESSARY AND APPROPRIATE FOR STUDENT'S EDUCATIONAL PROGRAMMING.

36. The issue before the Tribunal is whether the Board has established that the requested psychological and educational evaluations are necessary to develop an appropriate IEP for Student The Board asserts that these assessments are necessary "to develop an IEP reasonably calculated to enable [Student] to make progress appropriate in light of his circumstances and to ensure Student receives the free appropriate education to which he is entitled." ADPP at 1 (Summary of the Case).

37. The "necessity" of a proposed evaluation is the central inquiry when a district seeks to override parental refusal of consent. A district must demonstrate that it requires evaluation materials that are essential to assessing a child's special education needs. See *Shelby S. ex rel. Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454 (5th Cir. 2006) (finding a medical evaluation necessary to verify parental claims that the child's health status was fragile and that attendance without a guardian posed a risk of serious injury or death); see also *Bridgeport Indep. Sch. Dist.*, 109 LRP 72822 at *5 (TX SEA Aug. 24, 2009) (overriding parental refusal where the parent would not permit communication with private providers, preventing the district from understanding behaviors and deficits not explained by the student's Speech Impaired eligibility).

38. In cases involving initial eligibility or continued eligibility determinations, courts and hearing officers generally find requested assessments to be "necessary." *See,* e.g., *M.L. ex rel. A.L. v. El Paso Indep. Sch. Dist.*, 610 F. Supp. 2d 582, 599 (W.D. Tex. 2009), aff'd, 369 F. App'x 573 (5th Cir. 2010) (overriding parental consent to determine whether the student remained eligible under Speech Impaired); *Santa Fe Indep. Sch. Dist.*, 112 LRP 33649 at *6 (TX SEA May 23, 2013) (same); *Miami-Dade Cnty. Sch. Bd.*, 115 LRP 5622 at *4 (FL SEA May 19, 2014) (overriding refusal to conduct initial eligibility evaluations given the "acute and serious" nature of the student's conduct); *Montgomery Cnty. Pub. Schs.*, 111 LRP 56404 (MD SEA Sept. 8, 2010). Likewise, when the only existing evaluations are private assessments obtained by the parents, and there has been a significant change in the student's behavior or a legitimate question regarding eligibility, districts are not required to rely exclusively on private reports and may obtain their own necessary evaluations. See, e.g., *J.B. ex rel. B.B. v. Lake Washington Sch. Dist.*, No. C12-0574RSL, 2013 WL 195375 at *4 (W.D. Wash. Jan. 17, 2013).

39. By contrast, when eligibility is not in dispute and a district seeks evaluations merely to obtain "additional information," particularly while maintaining that its existing IEP provides a FAPE without such information, the requested assessments may be useful but not necessary. In those circumstances, hearing officers and courts have declined to override parental consent. *See*, *e.g., Suffield Bd. of Educ. v. L.Y.*, No. 3:12-CV-1026 (JCH), 2014 WL 104967 at *8 (D. Conn. Jan. 7,

2014) (reversing a sua sponte order overriding parental refusal); *Penn. Virtual Charter Sch.*, 112 LRP 27522 at *7–8 (PA SEA May 5, 2012) (denying request to override consent absent demonstrated necessity).

40. As explained in *Penn. Virtual Charter Sch.*, the IDEA's protection of family privacy would be rendered meaningless if parental refusal could be overridden based merely on utility, desirability, or agency preference. There must be either a specific and compelling reason closely linked to a factual determination necessary for the provision of appropriate services, or an overall justification sufficient to overcome the parent's statutory right to refuse consent. Otherwise, the parent's right to say "no" would lack practical effect.

41. Even when an evaluation is deemed necessary, the IDEA imposes substantive limits on the nature and administration of assessments. The statute prohibits the use of measures that may yield invalid results or create undue prejudice or confusion regarding a child's aptitude and skills. 20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(3). Evaluations must be appropriate in light of the child's unique circumstances; they must be used only for purposes for which the assessments are valid and reliable; and they must be selected and administered so as not to be discriminatory. 20 U.S.C. § 1414(b)(3). "There are no exceptions to this requirement." 71 Fed. Reg. 46642 (2006). The LEA must utilize "technically sound instruments," generally understood to mean assessments demonstrated through research to be valid and reliable. 34 C.F.R. § 300.304(b)(3); 71 Fed. Reg. 46642 (2006).

42. Federal regulations further require that assessments administered to a child with impaired sensory, manual, or speaking skills be selected and administered so that results accurately reflect the child's aptitude or achievement level, rather than the impairment itself. 34 C.F.R. § 300.304(c)(3).

43. Finally, the IDEA does not restrict IEP Teams to standardized testing during reevaluations, particularly when eligibility is not in question. Rather, the Team must review existing evaluation data—including parent-provided information, classroom-based data, observations, and local or state assessments—and determine what additional data, if any, are necessary to assess continued eligibility, academic and developmental needs, and whether modifications to the educational program are required. 20 U.S.C. § 1414(c)(1).

44. Because the determination of "necessity" is inherently fact-specific, it is typically resolved at the administrative hearing level, where testimony and documentary evidence permit the hearing officer to assess whether the requested evaluation is essential. *See, e.g., Pleasanton Unified Sch. Dist.*, 124 LRP 17161 at *16 (CA SEA May 29, 2024) (denying override where the proposed assessment plan was deficient); *In re: Student with a Disability*, 123 LRP 31701 at *8 (DE SEA Sept. 1, 2023) (overriding parental refusal to evaluate the cause of selective mutism where

no prior diagnostic evaluation existed).

45. The testimony and evidence provided by the Board did not establish how the proposed cognitive or educational evaluations are necessary or appropriate for Student's programming. As a threshold matter, when conducting Student's reevaluation, the IEP team determined that eligibility would be considered under the categories of Autism (AU) and Other Health Impaired (OHI), based on his diagnoses of autism spectrum disorder and Down syndrome. Stip. Ex. 6 p. 48. The Tribunal notes that neither federal regulations nor the North Carolina Policies Governing Services for Children with Disabilities require a cognitive evaluation for eligibility under AU or OHI. *See* 34 C.F.R. § 300.8(c)(1)(i) (AU); § 300.8(C)(9) (OHI); N.C. 1503-2.5(d)(1)(I) (AU); 1503-2.5(d)(10)(i) (OHI).

46. The record reflects that the Board has developed and implemented IEP's for Student for approximately seven (7) years without conducting these evaluations. By way of example, at the 2022 eligibility meeting, the IEP Team determined eligibility and developed an IEP without conducting a psychological evaluation that included a cognitive measure or an educational measure. Resp't. Ex. 1. The IEP Team included Petitioner's inclusion consultant, the evaluating school psychologist, occupational speech, and physical therapists, a Regional Coordinator, as well as the LEA representative and regular and special education teachers. Resp't. Ex. 1 p. 31. The IEP Team concluded that a cognitive assessment would not yield valid or reliable results given Student's Down syndrome and autism diagnoses. Stip. Ex. 2 p 12. Instead, the psychologist administered adaptive behavior measures, autism assessments, and functional behavioral analysis. The IEP Team relied on those results and ongoing progress monitoring data to develop present levels of performance to draft new, more ambitious IEP goals, without indicating a lack of necessary data. Resp't. Ex. 2 pp 33-46 (Present Levels of Performance); 49-53 (goals).

47. The record reflects that the first mention of a cognitive evaluation during the 2024 annual IEP process occurred on February 26, 2025—after the proposed IEP goals had been developed. T vol 2 p 342:8-22 (T of Mother). In 2025, the IEP Team did not identify any new areas of concern, warranting a cognitive evaluation, or that Student's needs have materially changed. Stip. Ex. 7.

48. Likewise, the Board did not present sufficient evidence that the information available to the IEP team is no longer sufficient to develop an appropriate IEP.[7] Although Special Education Teacher offered testimony that such information

[7] The Undersigned notes, in the parallel case, the Family filed a Motion to Enforce Stay-Put seeking an Order "enforcing stay-put and directing no Individualized Education Program (IEP) meetings be convened during the pendency of this action, and that any proposed revisions or modifications to [Student's] IEP be made in writing, outside the context of a formal IEP meeting and by mutual agreement of the Parties." *Motion to Enforce Stay Put*, 24 EDC 03399, October 28, 2025. The Family notified the Undersigned of the Board's

"would be beneficial" and referenced processing speed, she did not articulate how that data would provide meaningful new information to the IEP team or how such information would be used to modify Student's IEP. T vol 2 pp 253:8-254:2 ; *compare* T vol 1 pp 211:21-212:5; 215:15-16 (testifying "it would be beneficial in his programming" to know his processing speed) (T of Special Education Teacher) *with* T vol 2 p 251:22 (T of Special Education Teacher) (acknowledging that she was already aware of exhibited latency issues). Further, Special Education Teacher testified that she drafted Student's IEP goals and never informed the IEP Team that she lacked sufficient data to do so. T vol 2 p 244:13-18 (T of Special Education Teacher). Mother likewise testified that, over the past seven to eight years, no IEP Team member indicated that insufficient information existed to develop Student's IEP. T vol 2 p 373:12-17 (T of Mother).

49. Although the extended content standards were referenced during the Hearing, the decision to begin the extended content standards for the 2024–25 school year had already been made without reliance on data from the requested evaluations.[8] Pet'r Ex. 28 p. 366.

50. Dr. Burnette persuasively opined regarding the appropriateness of the proposed evaluations, and that comparing Student to same-age peers through cognitive or educational testing normed on populations that do not include children with complex support needs—particularly a student with both autism and Down syndrome—would provide no meaningful value to the IEP Team. T vol 3 p 475:1-12 (T of Burnette).

51. Dr. Anthony's testimony further underscored the necessity of an individualized and validity-driven assessment selection. She explained that she begins with a comprehensive developmental, medical, and educational history; reviews prior testing; and consults with teachers before selecting instruments. T vol 3 p 395:6-21 (T of Anthony). She testified that, when evaluating a child with motor, speech, attention, or medical concerns, she adjusts instrument selection and testing conditions accordingly, considers fatigue, and attention span, and determines whether multiple sessions are necessary. *Id.* at 397:2-18. With respect to Student, she identified facts such as partial hearing loss, fine motor impairments, low muscle

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intent to schedule an IEP meeting for Student and sought relief from attending an IEP meeting during stay-put. *Id.* The Board opposed, and the Undersigned denied, the Family's Motion, thus, allowing the Board to convene an IEP meeting. The Undersigned notes, however, that the Board's insistence on convening an IEP meeting without the requested evaluations is incongruous with the Board's argument of necessity "in order to develop an IEP reasonably calculated to enable [Student] to make progress."

[8] The Tribunal is not otherwise addressing the substantive appropriateness of the ECS with respect to Student in this Final Decision, as that is an issue raised in the parallel case.

tone, language delays, behavioral refusals, attention limitations, and medical conditions affecting alertness and concentration as relevant considerations in determining test appropriateness. T vol 3 pp 403:20-404:3 (T of Anthony); T vol 3 p 404:4-11 (T of Anthony) (expressing that she would "take into account [Student's] medical conditions" and would "need to be aware of [Student's] blood insulin levels and thyroid condition] and want information about how well managed they were at any given time as those are two medical conditions with known . . . potential impacts on alertness, fatigue, concentration and focus.").

52. Dr. Anthony further noted that, when assessing children with complex disabilities, standardized testing often yields limited results and must be interpreted cautiously, with clear statements regarding limitations in validity and reliability. These validity and reliability concerns are only heightened when, as here, the proposed standardized evaluations do not include children with Student's profile in their normative samples. T vol 3 p 405:15-16 (T of Anthony) (noting that "none" of the evaluations that have been proposed by the school psychologist "would include children with Student's profile in their normative sample). Dr. Deni similarly testified that psychologists have an obligation to select instruments appropriate for the individual being assessed, including consideration of the test's normative population, and to state clearly whether the results are valid and reliable so that other professionals understand any limitations. T vol 2 pp 283:10-16, 292:24-293:2. (T of Deni) (testifying that ethically, school psychologists are required to "choose instruments that are most appropriate for the individual [they're] assessing. . . that includes . . . if the instruments that are represented in the normative population"), T vol 2 p 284:1-15 (T of Deni).

53. The IDEA requires that assessments be valid, reliable, non-discriminatory, and technically sound. 20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304. The Board did not demonstrate that the proposed instruments would meet these standards for a student with Student's constellation of needs or rebut the IEP Team's prior determination that such assessments would be invalid or unreliable for Student.

54. The IDEA does not require a district to administer every assessment that might arguably be helpful before developing an IEP. *See Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist.,* 373 F. Supp. 2d 292, 299 (S.D.N.Y. 2005) ("IDEA does not compel a school district to perform every sort of test that would arguably be helpful before devising an IEP for a student."). Having reviewed the full record, the Tribunal concludes that Petitioner possesses sufficient evaluative and progress-monitoring data to design a substantively appropriate IEP for Student. The Board has not established that the proposed cognitive or educational valuations are necessary and appropriate to provide Student a free appropriate public education.

FINAL DECISION

Based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

1. Petitioner did not meet its burden and failed to prove by a preponderance of the evidence that the cognitive measure of a psychological evaluation is necessary for Student's educational programming.

2. Petitioner did not meet its burden and failed to prove by a preponderance of the evidence that the cognitive measure of a psychological evaluation is appropriate for Student's educational programming.

3. Petitioner did not meet its burden and failed to prove by a preponderance of the evidence that an educational evaluation is necessary for Student's educational programming.

4. Petitioner did not meet its burden and failed to prove by a preponderance of the evidence that an educational evaluation is appropriate for Student's educational programming.

5. Petitioner failed to prove by a preponderance of the evidence that it offered Respondents sufficient information to provide informed consent.

6. This Tribunal's oral rulings as well as its written rulings are incorporated into this Final Decision by reference.

7. Respondents are the prevailing party on all issues.

8. All claims are hereby **DISMISSED WITH PREJUDICE**.

9. To the extent that ancillary claims have not been specifically addressed, Petitioner has failed to meet its burden of proof as to any of those ancillary claims and they are **DISMISSED WITH PREJUDICE**.

10. Prior to the publication of this Final Decision, all personally identifiable information about Student or other information which may make it possible to identify Student with reasonable certainty **SHALL BE REDACTED**.

NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision. Any party aggrieved by the findings and decision

of a hearing officer may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. § 1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision. Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

Unless appealed to State or federal court, the State Board shall enforce the Final Decision of the administrative law judge.

IT IS SO ORDERED.

This the 8th day of April, 2026.

Samuel K Morris
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

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This the 8th day of April, 2026.

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