IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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KEITH H. and SHERI H.
as the next friend of JACOB H.,

ORDER

Plaintiffs,

02-C-0622-C

v.

THE JANESVILLE SCHOOL DISTRICT,

Defendant.

- -

This is a civil action in which plaintiffs Keith H. and Sheri H. (Jacob H.'s parents) seek judicial review of an administrative law judge's determination that, under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1487, defendant Janesville School District provided Jacob with a free appropriate public education during the 2001 spring semester and 2001-02 academic year, and that plaintiffs were not entitled to a reimbursement for Jacob's private school tuition for the 2001-02 academic year. Plaintiffs seek a reversal of these determinations.

Presently before the court is plaintiffs' motion to supplement the record with additional expert testimony from Dr. David Israelstam, a psychiatrist who testified at the

administrative hearing. (Although plaintiffs also moved to supplement the record with the additional expert testimony of Dr. Karen Grede, a psychotherapist, they have since withdrawn that portion of their motion. See Plts.' Reply, dkt. #12, at 1 n.1.) Plaintiffs maintain that they intend on arguing that the administrative law judge erred by disregarding Dr. Israelstam's testimony. In plaintiff's opinion, the administrative law judge assumed erroneously that Dr. Israelstam's opinion was professionally incompetent because he had relied solely on information provided by Jacob's mother to make his diagnosis and prescribe treatment rather than also observing or collecting information from Jacob. Thus, plaintiffs seek to add Dr. Israelstam's testimony that the methods he used to evaluate Jacob are consistent with the standards of his profession. Defendants argue that there were no procedural infirmaries and plaintiffs had ample opportunity to present this additional evidence at the hearing.

The Court of Appeals for the Seventh Circuit has held that "[a] district court is not required to allow evidence proffered by a plaintiff in an IDEA proceeding" and that "the determination of whether to allow additional evidence . . . 'must be left to the discretion of the trial court which must be careful not to allow such evidence to change the character of the hearing from one of review to a trial *de novo*.'" Monticello School District No. 25 v. George L., 102 F.3d 895, 901 (7th Cir. 1996) (quoting Town of Burlington v. Department of Education, 736 F.2d 773, 791 (1st Cir. 1984)); see also School District of Wisconsin

Dells v. Z.S., 184 F. Supp. 2d 860, 874 (W.D. Wis. 2001). In this case, the additional testimony would be redundant because Dr. Israelstam has already testified that the method he used to evaluate Jacob is in common use in his profession. Specifically, Dr. Israelstam answered the following questions at the hearing:

> Q: The process that you just described, that is of talking to the mother of a 10-year-old and gaining information primarily from her; is that something that you customarily do?
>
> A: It is.
>
> Q: And is that something that to the best of your knowledge is a customary practice among people in your profession?
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> A: It is.
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> Transcript of Proceedings, dkt. #3, vol. 1, at 389-90.

Plaintiffs' motion to supplement the record will be denied as duplicative.

ORDER

IT IS ORDERED that plaintiffs' motion to supplement the record with additional

expert testimony from Dr. David Israelstam is DENIED.

Entered this 22nd day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge