

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATIONEnfield Board of Education v. Student<sup>1</sup>

Appearing on behalf of Student: Student's Mother, *Pro Se*

Appearing on behalf of the Board of Education: Attorney Christine Chinni  
Chinni & Associates  
14 Station Street  
Simsbury, CT 06070

Appearing before: Janis C. Jerman  
Hearing Officer

**FINAL DECISION AND ORDER**Procedural Posture

A special education hearing in the above-captioned matter was requested by Board of Education ("BOE") via letter dated March 2, 2021<sup>2</sup> and was time-stamped as received by the State Department of Education Due Process Unit on June 1. On the afternoon of June 14, Student's Mother sent an email indicating that she just received the Notice of Prehearing Conference in the mail and that it was forwarded from her old address. She provided her current mailing address and an email address. On that same date, the Hearing Officer forwarded BOE's letter to Student's Mother. The original 45-day deadline to mail the final decision and order was July 29.

At the June 14 telephonic prehearing conference, Attorney Chinni appeared on behalf of BOE; no one appeared on behalf of Student.<sup>3</sup> The following issues are identified:

1. Was the Board of Education's most recent psychoeducational evaluation of Student appropriate?
2. If the answer to Issue One above is in the negative, is Student entitled to an Independent Educational Evaluation at public expense?

A hearing was scheduled for July 13. The parties' witness lists and exhibits were due on July 6. Neither party filed their documents. On July 7, BOE's Attorney requested a 30-day extension of the deadline to mail the final decision and order. Student's Mother objected to an extension. BOE's Attorney subsequently requested to withdraw the case without prejudice due to lack of availability of witnesses and insufficient time to prepare for the July 13 hearing. The request to withdraw was denied and treated as a request to postpone the July 13 hearing until late

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<sup>1</sup> To comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally identifiable information.

<sup>2</sup> All dates are 2021 unless otherwise indicated.

<sup>3</sup> On the afternoon of June 14, Student's Mother sent an email indicating that she just received the Notice of Prehearing Conference in the mail and that it was forwarded from her old address. She provided her current mailing address and email address.

July. The request to extend the deadline to mail the final decision and order until August 28 was granted. The July 13 hearing was postponed to July 28.

Student's Mother, BOE's Attorney, and BOE's representative and witnesses appeared at the July 28 videoconference hearing. Student's Mother stated that she did not receive BOE's exhibits. BOE's Attorney presented a Post Office Tracking receipt indicating that the exhibits were timely delivered. At Student's Mother's request, the hearing was postponed to August 19. BOE's Attorney disclosed the exhibits to Student's Mother on July 27 via the online fileshare folder, on July 28 via email, and via express mail with signature required on August 10. BOE's Attorney presented a Post Office Tracking receipt indicating that the exhibits were timely delivered with recipient signature.

On the afternoon of August 18, Student's Mother emailed to state that she did not receive the exhibits, that she has not had the exhibits five days in advance to be able to prepare for hearing, and that she was concerned about a delay in the case.

BOE's exhibits B1, B2, B3, B4, and B5 were admitted as full exhibits.<sup>4</sup> Student's Mother did not submit any witness list or exhibits. The following witnesses testified under oath: BOE's Social Worker ("Social Worker"), BOE's Speech Language Pathologist ("SLP"), BOE's School Psychologist ("School Psychologist"), BOE's School Psychologist for PPT Teams ("PPT School Psychologist"), Student's Mother, BOE's Director of Pupil Services ("Director").<sup>5</sup>

At the conclusion of the August 19 hearing, BOE's request for post-hearing briefs was denied. The parties requested a two-week extension of the deadline to mail the final decision to allow reasonable time for the Hearing Officer to review the evidence and draft the decision. The request was granted on the record and the deadline to mail the final decision and order was extended to September 10,

To the extent that the procedural history, statement of jurisdiction, findings of fact, or discussion represent conclusions of law, they should be so considered, and vice versa.

### Statement of Jurisdiction

This matter was heard as a contested case pursuant to Connecticut General Statutes ("CGS") § 10-76h and related regulations, 20 United States Code ("USC") § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, and § 4-181a and § 4-186.

### Findings of Relevant Fact<sup>6</sup>

#### Background

1. Student, who was 13 years old at the time of this hearing, will be in the eighth grade during the upcoming 2021-22 school year. He attends BOE's Middle School. Student struggles in science and social studies. Math is his strong area (Exh. B3; Testimony of Student's Mother).
2. Student had a medical diagnosis of ADHD. In 2014, Student was found eligible for a Section 504 Plan for ADHD. He was referred to a Planning and Placement Team ("PPT") in 2020 by Student's Mother. On December 7, 2020, based on the referral from Student's Mother, a PPT found Student eligible for special education services under the category of Other Health

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<sup>4</sup> BOE's exhibits are cited as "B#."

<sup>5</sup> Director was present as BOE's representative and heard all the witness testimony prior to her testimony, which is weighed accordingly.

<sup>6</sup> In the Discussion, Findings of Fact are cited as "FOF-#."

Impairment – Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (“OHI-ADD/ADHD”) (Exh. B1, B2, B3, B5).

3. Student attended school in-person prior to the COVID19 pandemic shut down. He attended school virtually until school re-opened on a hybrid basis in the 2020-21 school year. Student struggled during virtual learning. He did not always hand in his work, did his work as quickly as possible to be done with it, checked into online class and then went off screen to “do his own thing.” Student’s Mother taught him at home during virtual learning (Testimony of Student’s Mother).
4. In January 2021, Student’s Mother provided BOE with private evaluations of Student conducted through Connecticut Children’s Medical Center. The evaluations consisted of the CASL2 General Language Ability Index and Supralinguistic Index and the Childhood Autism Rating Scale 2<sup>nd</sup> Edition High Functioning Version. Student received a clinical diagnosis of Autism. The PPT considered the medical diagnosis in evaluating Student and developing his IEP (Exh. B3; Testimony of Student’s Mother, Director).
5. Student’s Mother expressed concerns about Student’s abilities and needs in several areas, including social skills; behavior level of functioning; and receptive, expressive, and pragmatic language. In response to Student’s Mother’s concerns and with her consent, BOE conducted an additional psychoeducational evaluation, social work screening, and speech and language evaluation in the spring of 2021 to determine the impact on Student’s education and need for services. BOE has not conducted any subsequent evaluations of Student (Exh. B2, B3; Testimony of Social Worker, SLP, Director).

#### Qualifications of Representatives that Testified

6. Social Worker holds a Bachelor of Science in Human Services, a Master’s in Social Work, and a Credential in Family Development. She is starting her fourth year as the school social worker at BOE’s Middle School. She previously served as a special education paraprofessional on both a one-on-one basis and in the resource room. She also previously served as a behavioral intervention specialist, a case manager with at risk youth on parole, and a family support specialist (Testimony of Social Worker).
7. SLP holds a Master of Science in Speech Language Pathology and a Certificate of Clinical Competence from the American Speech Language Hearing Association. She is licensed by the Connecticut Board of Health which allows her to engage in private practice in addition to working in the school setting. She has served as BOE’s speech language pathologist at the secondary level since winter 2015. She works at BOE’s middle school and high school where she provides direct services to students, conducts evaluations, consults with teachers, and provides support to anyone with questions about speech language issues in the school. Prior to working for BOE, SLP worked in afterschool childcare. On average, she conducts 30 evaluations per year and estimates that she has done more than 150 evaluations in school (Testimony of SLP).
8. School Psychologist holds a Bachelor of Arts in Psychology, a Master of Science in School Psychology, and a Sixth Year Degree. She holds Connecticut and national certifications. She has served as School Psychologist in BOE’s Middle School for eight years. On average, she conducts 80 evaluations per year and has completed over 500 evaluations (Testimony of School Psychologist).
9. PPT School Psychologist holds a Bachelor of Arts in Psychology with a concentration in mental health, a Master of Science in School Psychology, and a Sixth Year Diploma in

School Psychology. For three years, she served as BOE's school psychologist for the PPT. She now works in a school district out of state. In her four years as a school psychologist, she has conducted more than 200 comprehensive evaluations (Testimony of PPT School Psychologist).

10. Director holds a Bachelor of Arts in English, a Master of Arts in Special Education, and a Sixth Year Diploma in School Administration and Supervision. She served as a special education teacher for more than eleven years and as special education coordinator for four years. She has served as Director of Pupil Services since 2012 (Testimony of Director).

#### Psychoeducational Evaluation - 2020

11. PPT School Psychologist conducted a psychoeducational evaluation of Student in February 2020 as part of his initial evaluation based on Student's Mother's concerns about the impact of ADHD on Student's education. Student was 12 years old and in sixth grade at the time of the evaluation. The evaluation included review of records, observations, and administration of the following assessments: Conners 3<sup>rd</sup> Edition ("Conners3"), Weschler Individual Achievement Test 3<sup>rd</sup> Edition ("WIAT3"), and Weschler Intelligence Scale for Children 5<sup>th</sup> Edition ("WISC5") (Exh. B1; Testimony of PPT School Psychologist).
12. The WISC5 is an individually administered standardized test that measures general cognitive functioning over a span of domains. On the WISC5, Student scored in the High Average range for Processing Speed; in the Average range for Visual Spatial, Nonverbal Index, and Cognitive Proficiency; and Low Average for Verbal Comprehension, Fluid Reasoning, Working Memory, Full Scale IQ, and General Ability Index (Exh. B1).
13. The WIAT3 is a standardized achievement test that looks at reading, writing, and math and compares Student's academic skills to others of the same age or grade to determine current achievement levels. On the WIAT3, Student scored in the Average range for Total Reading, Basic Reading, Mathematics, and Math Fluency; and Below Average for Reading Comprehension and Fluency and Written Expression (Exh. B1; Testimony of PPT School Psychologist).
14. The Conners3 is a rating scale to be completed by teachers, parents, and student. It is normed for ages six through eighteen and looks at information about Student's behaviors and feelings as they present at home and in school. Student and his science and social studies teachers completed the Conners3 rating forms. Student's teachers rated his behaviors as Very Elevated. Student rated himself as Average for Inattention, ADHD Predominately Inattentive Presentation, and Conduct Problems; High Average for Hyperactivity/Impulsivity, Family Relations, and ADHD Predominately Hyperactivity/Impulsivity Presentation; Elevated for Defiance/Aggression; and Very Elevated for Learning Problems and Oppositional Defiant Disorder (Exh. B1; Testimony of PPT School Psychologist).
15. During the evaluation, Student developed rapport with the evaluator and used various strategies to work through the presented problems and tasks. Student was able to complete the work quickly and accurately. Student's low average reading comprehension "will bring down his composite score." Behaviors exhibited at the evaluation such as putting his head down, tapping fingers, and shifting in seat could also impact his testing data. Overall, Student has grade appropriate academic skills in sixth grade (Exh. B1; Testimony of PPT School Psychologist).
16. The PPT reviewed the evaluation at a meeting and determined that Student was not eligible for special education services at that time. Student's Mother shared additional concerns with

attention and executive functioning and provided the PPT with Student's Autism diagnosis. Based on those concerns, PPT School Psychologist conducted additional testing in-person in March 2020 just before the COVID19 pandemic shutdown (Exh. B5; Testimony of PPT School Psychologist).

17. PPT School Psychologist did classroom observations in science and reading classes and administered the Behavior Rating Inventory of Executive Function 2<sup>nd</sup> Edition ("BRIEF2") and select subtests of the Developmental Neuropsychological Assessment 2<sup>nd</sup> Edition ("NEPSY2"). Student again participated in testing willingly and maintained rapport with the evaluator (Exh. B5; Testimony of PPT School Psychologist).
18. The BRIEF2 rating scale, which looks at executive functioning and self-regulation, was completed by Student and by his social studies, science and reading, math, and English teachers. Each of the teachers expressed concerns for Student's Behavioral Regulation, rating him as Clinically Elevated. There was variability in teacher ratings for Emotional Regulation; from No Concern in math to Clinically Elevated in science and English. There was minimal variation among the teachers' ratings for Cognitive Regulation, which was primarily rated as Clinically Elevated. The Global Executive Composite is an overall summary that incorporates all the BRIEF2 scores and indicates a Clinically Elevated concern (Exh. B5; Testimony of PPT School Psychologist).
19. The NEPSY2 is an individually administered standardized comprehensive evaluation of neuropsychological development. PPT School Psychologist selected subtests for executive functioning and attention based on Student's Mothers concerns (Exh. B5; Testimony of PPT School Psychologist).
20. Student scored Above Expected Level on Animal Sorting; At Expected Level on Clocks and Design Fluency; Borderline on Auditory Attention, Response Set, and Inhibition; Below Expected Level on Switching; and Well Below Expected Level on Naming. At times, Student had a difficult time changing from one activity to another; difficulty regulating emotional response to certain situation; did not always initiate or complete a task when first presented; and didn't always check his work or self-correct. Student has the skills to self-correct and plan. In some cases, time was a factor impacting his score. When he did self-correct, it impacted his time which impacted his score (Exh. B5; Testimony of PPT School Psychologist).
21. PPT School Psychologist is confident in the results because the evaluation was comprehensive and looked at the whole child using standardized tests, file reviews, grades, attendance, and behavioral observations. The evaluation helps determine if there is an adverse educational impact that requires specialized instruction. PPT School Psychologist made numerous recommendations for the PPT to consider (Exh. B5; Testimony of PPT School Psychologist).

#### Psychoeducational Evaluation - 2021

22. School Psychologist conducted a psychoeducational evaluation of Student in spring 2021. Student was 13 years old and in seventh grade at the time of the evaluation which included review of records and administration of the following assessments: Behavior Assessment Systems for Children 3<sup>rd</sup> Edition ("BASC3") (student rating scale), Social Responsiveness Scale 2<sup>nd</sup> Edition ("SRS2") (parent and teacher rating scales), and Autism Spectrum Rating Scale ("ASRS") (parent and teacher rating scales). School Psychologist met with Student one time for about 30-45 minutes as part of the evaluation. School Psychologist was aware of

Student as she had observed other students in some of his classrooms but had not previously observed him (Exh. B3; Testimony of School Psychologist).

23. COVID19 pandemic protocols were utilized during the evaluation. Student and School Psychologist both wore masks, sanitized hands prior to each testing session, and were separated by a plexiglass partition during the evaluation sessions (Exh. B3; Testimony of School Psychologist).
24. On the SRS2, Student's Mother rated Student in the Severe range on all areas assessed. Student's English and Math Teachers rated him as Within Normal Limits on all areas assessed (Exh. B3; Testimony of School Psychologist).
25. On the ASRS, Student's Mother rated Student as Slightly Elevated, Elevated, or Very Elevated on all areas, with a total score of Very Elevated. Student's English Teacher rated Student as Average on all areas except Unusual Behaviors, Atypical Language, and Behavioral Rigidity, which she rated as Low. Student's Math Teacher rated Student as Average on all areas except Peer Socialization and Behavioral Rigidity, which she rated as Slightly Elevated. Each teacher's ratings translated to a total score of Average (Exh. B3; Testimony of School Psychologist).
26. On the BASC3, which assess Student's perceptions of self and his environment, Student rated himself as being in the At Risk range for two of the 21 areas: Attitude to School and Atypicality (Exh. B3; Testimony of School Psychologist).
27. "It appears that [Student] displays significantly more behaviors of concern within the home environment than within the school environment." The results indicate that Student can function appropriately and typically in the school environment (Exh. B3; Testimony of School Psychologist).
28. Given that Student "seemed to provide his best effort on all tasks", the results should be considered an accurate portrayal of his present level of functioning. School Psychologist notes that evaluation results should be interpreted with caution due to the impact of the pandemic on social distancing, remote learning, and limited group activities (Exh. B3; Testimony of School Psychologist).
29. School Psychologist made recommendations for Student based on the results of the evaluation as recorded in her report dated May 7, 2021 (Exh. B3).

#### Social Work Screening

30. Social Worker conducted an in-person screening on March 11, during Student's seventh grade school year (Exh. B4; Testimony of Social Worker).
31. Prior to the screening, Social Worker met with Student to explain the process so that he would understand it. Student wanted to do the screening at that time. Social Worker scheduled the screening for a later point (Testimony of Social Worker).
32. The screening consisted of an informal interview of Student which allows Social Worker to get a picture from his point of view. She checks on his emotional well-being, self-perception, risk factors, and whether Student has any concerns. She uses open-ended questions to allow Student to talk about himself (Testimony of Social Worker).
33. Social Worker found Student to be very tuned in with his feelings about behaviors that he displayed prior to seventh grade. Student easily expressed himself and stopped to think about and acknowledge where he is, his improvements, and what does and does not work for him. Student did not express concerns about his educational program. He did express prior concerns about his education and thought that medication and other supports were working

for him and did not feel that other interventions were necessary. Student receives outside assistance which he feels is enough (Testimony of Social Worker).

34. The concerns that Student's Mother identified at home and expressed concern about were not seen in the classroom. Student was very open with Social Worker and did not express concerns about stress related to remote learning. During the screening, Student was excited, acknowledged his positive improvements, and did not express any concerns (Testimony of Social Worker).
35. Social Worker opined that Student does not need social work support within the school system. She is confident in the results of the screening and feels that she got an accurate look at potential risk factors to Student's emotional well-being. She found no such risk factors for Student. Social Worker's screening report was presented on May 13, 2021 (Exh. B4; Testimony of Social Worker).

### Speech and Language Evaluation

36. SLP conducted a speech language evaluation of Student in-person across four to five chunks of time for about 30 minutes each. She conducted the evaluation on different days and times because kids can vary throughout the day and she did not want to always pull him from the same class. Student was 13 years old and in seventh grade at the time of the evaluation (Exh. B2; Testimony of SLP).
37. SLP was not familiar with Student prior to the evaluation. She reviewed his record and administered standardized assessments. SLP did not observe Student in class. She spoke with Student's special education teacher, the school psychologist, and assistant principal about "their interpretation of him." (Exh. B2; Testimony of SLP).
38. SLP administered the Clinical Evaluation of Language Fundamentals 5<sup>th</sup> Edition ("CELF5") which is a standardized test with subtests that address receptive language, expressive language, language content, and language memory that allows an overall view of language. Student's results were in the average range for each of these areas and on all CELF5 subtests except for Recalling Sentences which was below average (Exh. B2; Testimony of SLP).
39. SLP administered the Meta-Linguistic Profile portion of the CELF5 to assess Student's comprehension and use of higher-level language skills with the environment. Student's teachers completed rating skills based on observable data in the classroom and academic environment. Student's results were in the low range based on observable data in his classes. The teachers rated Student on one of for frequency markers (always/almost always; often; sometimes; and never/almost never). There is no marker for "lack of opportunity to observe." "Some areas marked 'never/almost never' were not provided with an opportunity to observe due to a lack of the specific situation in the given (academic) setting or lack of response or engagement from [Student] within the setting, which deflated the score some." "Areas of difficulty or areas that were unobserved were understanding personification, inferring information from public opinion, comprehending/predicting flexible outcomes, conveying complex intentions and thoughts, changing interaction style to meet the participant's needs, and redirecting unpleasant conversations/discussions appropriately." (Exh. B2; Testimony of SLP).
40. SLP administered the Test of Pragmatic Language 2 which measures Student's ability to effectively use social language through use of mock situations, abstract language, and metaphors. Student's results were in the below average range. "He did well with attending to situation, event or setting, respecting turn-taking, logical and appropriate topic introduction

and maintenance, monitoring facial expressions and body language.” Student was “on the right track” but unable to provide all the criteria to get the full points (Exh. B2; Testimony of SLP).

41. COVID19 pandemic protocols were utilized during the evaluation. Student and SLP both wore masks and were separated by a plexiglass partition during the evaluation sessions. “Removing visual cues of the face during receptive language tasks can impact comprehension, pragmatics, and hearing the information, however, safety and health measures outweighed standard test administration protocols in this situation.” She exercised clinical judgement in addition to testing results to assess Student fully (Exh. B2; Testimony of SLP).
42. SLP did not notice Student stuttering or speaking so quickly that he was hard to understand (Testimony of SLP).
43. Based on the evaluation results and application of State regulations, SLP did not recommend speech language services for Student at that time. Although some scores were below average, they were not a deficit or were not observed in the classroom setting (Testimony of SLP).
44. SLP feels that the results are accurate based on Student’s standardized scores and informal assessment. The results were consistent with the history of previous evaluation reports (Testimony of SLP).
45. SLP’s Speech Language Re-Evaluation Report dated April 7, 2021 was reviewed with the PPT which added a goal into Student’s IEP to address the below average areas if they come up in school in presentable ways (Exh. B2; Testimony of SLP).

#### Conclusions of Law

1. The Hearing Officer has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education (“FAPE”) to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the PPT, or (C) to prescribe alternate special educational programs for the child. CGS § 10-76h(d)(1).
2. A parent has the right to request an independent educational evaluation at public expense if the parent disagrees with the board of education’s evaluation. Individuals with Disabilities Education Act (“IDEA”), 20 USC § 1415(b); 34 Code of Federal Regulations (“CFR”) 300.502(b)(1); Connecticut State Regulations (“ConnRegs”) § 10-76d-9.
3. If a parent requests an independent educational evaluation at public expense, the board of education must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense. 34 CFR § 300.502(b)(2); ConnRegs § 10-76d-9.
4. In conducting the evaluation, the board of education must:
  - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent;
  - b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 CFR § 300.304(b).

5. Each board of education must ensure that:
  - a. Assessments and other evaluation materials used to assess a child under this part (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) are used for the purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of the assessments.
  - b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - d. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
  - e. In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
  - f. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

34 CFR § 300.304(c).

6. BOE has the burden of proving the appropriateness of its evaluation by a preponderance of the evidence. ConnRegs § 10-76h-14.
7. If the board of education requests a due process hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. 34 CFR § 300.502(b)(3); ConnRegs § 10-76d-9.

### Discussion

Each of the issues identified in this case is addressed in this Discussion section. All the parties' arguments and evidence have been thoroughly reviewed and considered by the Hearing Officer.

### Positions of the Parties

BOE's Attorney argues that this is a simple case of the appropriateness of BOE's evaluation of Student; that BOE conducted additional testing based on Student's Mother's concerns even though BOE did not think the additional testing was necessary; that the evaluation

was designed to test all suspected areas of disability; that BOE used standard batteries and approaches that are accepted in the field; that all evaluators are fully qualified and certified; that the evaluations meet the appropriate standards under law; that Student's Mother's concerns are about services she wants to see in the IEP, not the quality of the evaluations; and that there is no basis for granting an IEE at BOE's expense. (BOE's Attorney's opening and closing statements).

Student's Mother disagrees with BOE's evaluation and feels that it doesn't capture the full, factual picture of Student who is smart and struggles in certain areas including behavioral difficulties that he can't control on his own. She argues that Student struggles with peer interactions and can be socially awkward; that the evaluation did not include such interactions; that he has more difficulty communicating with peers than adults; and testing with adults may show different results than testing with peers.

Student's Mother expressed concern about the timing of the process and the impact of COVID19 pandemic on the results. She feels that BOE did not "complete every component of testing that should have been done." Student's Mother wanted "reports from different teachers to identify accommodations needed to help him succeed the most." Student's Mother argues that she is not looking for anything drastic and wants some additional services to help Student based on the concerns she expressed.

Student's Mother feels that Student is not classified properly and should be classified as eligible for special education under Autism category. She questions how BOE can say what is appropriate for Student when he is not classified properly. Student's Mother is trying to do her best to advocate for Student and his education so that he can succeed. She feels that she gets "immediately shot down" when requesting services for Student so she had no choice but to request an IEE. She would like for someone who is not familiar with Student to evaluate him to get a clear opinion of him (Student's Mother's opening and closing statements).

### **I. Was the Board of Education's most recent psychoeducational evaluation of Student appropriate?**

BOE conducted multiple evaluations of Student, including multiple supplemental evaluations as requested by Student's Mother even though they felt the additional testing was not necessary (FOF-5, 11, 16, 22, 30, 36). BOE used a variety of comprehensive standard assessment tools and strategies to gather relevant information, including information provided by Student's Mother (FOF-11, 17, 22, 30, 32, 36, 38, 39, 40). The evaluations were tailored to the specific concerns raised by Student's Mother (FOF-5, 11, 12, 13, 14, 17, 18, 19, 21, 22, 32, 36, 38, 39, 40). The evaluators were experienced and qualified to conduct the evaluations (FOF-6, 7, 8, 9). The evaluations were intended to provide relevant information to determine Student's educational needs and the evaluators made recommendations consistent with the results (FOF-5, 11, 16, 21, 27, 28, 29, 35, 43, 45).

Student's Mother testified that BOE's evaluations captured some but not all of Student's struggles. Certain of the testing results were consistent with Student's Mother's testimony. For example, she testified that Student struggles in science and English and that math is his strong area. Certain of the evaluation results reflect this (FOF-1, 13, 18).

Student's Mother testified that BOE "would get better teacher feedback if they saw him in person...and [Student] might self-assess differently." Each BOE witness credibly testified that they administered the evaluation in person, not virtually. This is supported by the evaluation reports which refer to being in person with COVID19 pandemic precautions in place (FOF-16, 23, 30, 36, 41).

Student's Mother wanted someone unfamiliar with Student to evaluate him. SLP was not familiar with Student prior to evaluating him and School Psychologist was aware of him but had not worked with him (FOF-22, 37).

Student's Mother expressed concern about the impact of the COVID19 pandemic on Student and his evaluation results. The only specific concern identified was that masking during evaluations eliminated the ability to take facial cues and impacted the results. SLP took this into consideration in the evaluation and commented on its potential impact (FOF-41).

Student's Mother also stated that BOE did not look at "his individual circumstances that would have had without pandemic." The evaluations looked at Student's present levels of functioning. The impact of COVID19 pandemic on Student's must be considered to the extent that it impacts present levels of functioning.

Student's Mother expressed concern about Student being classified as eligible for special education under the category of OHI-ADD/ADHD instead of Autism despite her providing BOE with a clinical diagnosis of Autism. She suggests that inappropriate evaluations led to that result. Whether BOE misclassified Student and/or provided appropriate services is not at issue in this case which is limited to whether BOE appropriately evaluated Student. Based on the evaluation results, the PPT determined that Student does not meet the state criteria to be classified as eligible for special education services under the primary disability of Autism (FOF-4, 16). That does not mean that Student does not have Autism and does not mean that the evaluation was inappropriate.

Most of Student's Mother's concerns were about his eligibility classification and services provided, not specific disagreements with the evaluation results. She stated that she gets "immediately shot down" when requesting services for Student so she had no choice but to request an IEE. During testimony and her closing argument, she repeatedly referred to a certain service that she wanted implemented. The appropriateness of services being provided is not at issue in this case.

BOE's most recent evaluation reports are dated March 11, April 7, and May 7, 2021 (FOF-29, 30, 35, 45). The Social Work Screening indicates that it was presented on May 13, 2021 (FOF-35). The request for due process hearing was filed on June 1, 2021. There was no evidence as to the date on which Student's Mother expressed disagreement and requested an IEE after the evaluation reports were presented. BOE's filing 19 days after presentation of the evaluations is found to be done without unnecessary delay. 34 CFR § 300.502(b)(2); ConnRegs § 10-76d-9.

Each of the evaluators are found to be credible witnesses. Student's Mother asked probing questions of the witnesses, was thoughtful about the situation, and was an active advocate for Student during these proceedings.

BOE met its burden of proving the appropriateness of its evaluations of Student by a preponderance of the evidence.

## **II. If the answer to Issue One above is in the negative, is Student entitled to an Independent Educational Evaluation at public expense?**

This issue is moot considering the finding in Issue One, above.

**FINAL DECISION AND ORDER**

1. The Board of Education's most recent psychoeducational evaluation of Student was appropriate.
2. Student is not entitled to an Independent Educational Evaluation at public expense.