

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Plainfield Board of Education v. Student

For the Student: Parent, defaulted for failure to appear

For the Board: William Connon, Esq.
Sullivan Schoen Campana Connon
646 Prospect Avenue
Hartford, CT 06105

Before: Scott P. Myers, Esq., Hearing Officer

FINAL DECISION AND ORDER

ISSUE

1. Whether the psycho-educational evaluation proposed by the Board at the November 19, 2002 PPT was appropriate.

SUMMARY

At a PPT on November 19, 2002, the Board proposed to conduct a psycho-educational evaluation of the Student to determine whether she was eligible for special education and related services under Federal and State special education laws and, if so, under what classification. The Parent has refused to consent to that evaluation, and the Board commenced due process seeking a determination as to whether its proposed psycho-educational evaluation is appropriate. The Hearing Officer finds that the Board's proposed evaluation is appropriate.

PROCEDURAL HISTORY

This matter was commenced by the Board by request directed to the State Department of Education dated April 29, 2003. The request has been marked as Exhibit H.O. 1.

At no point in this proceeding has the Parent contacted the Hearing Officer directly, either by telephone, in writing or otherwise. It is the Hearing Officer's understanding that the only way to contact the Parent by telephone is through a cell phone belonging to a friend of the Parent ("K"). The Hearing Officer left a message at that number on May 5, 2003 seeking to schedule a time for the telephonic Pre-Hearing Conference ("PHC"), but received no response. In attempting to arrange a date and time for the PHC with the Parent, the Hearing Officer called that number again on May 8, 2003 and spoke to K. The Hearing Officer identified himself to K and stated the reason for the call. K advised that he had relayed the earlier message from the Hearing Officer to the Parent, and that the Parent reportedly told K that she did not want to have

anything to do with the hearing. The Hearing Officer asked K to have the Parent contact the Hearing Officer directly to discuss the issue.

On May 8, 2003, the Hearing Officer sent a notice scheduling the PHC to the Board's counsel and to the Parent, the latter by certified mail, return receipt requested. In that notice, the Hearing Officer advised the Parent as follows:

To assure that the Parent makes an informed decision in this matter, the Parent is advised that it is her right not to participate in the proceeding if she chooses not to participate. However, since this hearing has been commenced by the Board, unless and until the Board withdraws its request for a hearing, the hearing will proceed even if the Parent does not participate. The Department's Regulations require that both parties participate in the Pre-Hearing Conference, at which time the issues set for hearing will be identified, a schedule for exchanging documentary evidence will be established and a hearing date set. If a party fails to participate in any of these activities, fails to attend a hearing or the Pre-Hearing Conference, or otherwise fails to comply with a procedural order issued by the Hearing Officer, the Hearing Officer may proceed to decide the issue on the merits or may issue a default "judgment" as a sanction for non-compliance or non-participation.

In other words, even if the Parent does not participate, the Board can have its issue resolved and the Hearing Officer can issue a decision and order based solely on the evidence as presented by the Board.

To assure that the Student's interests are fully protected, the Parent is ordered to contact the Hearing Officer on or before 12:00 p.m. on Tuesday May 13, 2003 to advise as to whether she will participate in the Pre-Hearing Conference or not. If the Parent intends to participate in the Pre-Hearing Conference, she is directed to provide the Hearing Officer with a telephone number at which she can be reached at 9:30 a.m. on May 14, 2003. The Parent should contact the Hearing Officer at [telephone number] and leave a message if the Hearing Officer is not available.

The Parent did not contact the Hearing Officer prior to the PHC, which convened on May 14, 2003 at 9:30 a.m. Counsel for the Board appeared and participated. In the presence of counsel for the Board, the Hearing Officer attempted to contact the Parent at K's cell phone number. K answered and participated briefly in the PHC. K advised that the Parent did not desire to participate in this due process hearing. In response to various questions asked by K, K was advised of the potential consequences of the Parent not participating in this proceeding, including but not limited to the fact that the Hearing Officer could proceed in the Parent's absence and issue a final decision on the merits and that should the Hearing Officer find that the Board may proceed with its evaluation and the Parent refuse to allow the Student to be evaluated, the Board may make a referral to the Department of Children and Families. K asked that the Parent continue to be sent materials in this matter at the address to which the May 8, 2003 notice had been sent to the Parent by certified mail.

On May 15, 2003, the Hearing Officer issued a scheduling order which recited the above discussion from the PHC, and advised the Parent, among other things, as follows:

If the Parent changes her mind and elects to participate in this proceeding, she is directed to contact the Hearing Officer as soon as possible.

The scheduling order identified the issue set for hearing as follows: “Whether the evaluation of the Student proposed by the Board is appropriate within the meaning of 34 C.F.R. Section 300.502(b)(3).”¹ The scheduling order also advised the Parent as follows:

Hearing will proceed on *May 30, 2003*, starting at 9:00 a.m. and continuing through 4:30 p.m. . . . With the consent of counsel for the Board, the following procedure may be implemented: The Board may submit with its record a statement of its position on the merits signed by a Board employee who will be available to testify at hearing if necessary . . . The parties are advised that if the Parent continues to refuse to participate in this proceeding, the Hearing Officer may issue a decision based on the documentary record, including the Board’s sworn statement, if one is submitted, as well as the documentary record submitted by the Parent, if the Parent submits a record. That decision may be a final decision, or may be a proposed decision submitted for review and comment by the parties. In the alternative, if the Board wishes to proceed with a hearing, hearing will proceed on May 30, 2003.

A copy of the scheduling order was sent to the Parent by certified mail, return receipt requested.

The Board timely submitted its record (consisting of documents marked Exhibits B1 through B68) and a statement of James A. Blair, the Board’s Director of Pupil Personnel Services (the “Blair Statement”). The Board did not submit a witness list. The Parent did not submit either a record or a witness list as provided in the scheduling order.

After reviewing the documentary record submitted by the Board, the Hearing Officer concluded that that record was sufficient to enable the Hearing Officer to render a decision in this matter without the need for taking testimonial evidence. The Board confirmed on May 23, 2003 that it was waiving the right to present testimonial evidence. (Exhibit H.O. 2) By notice and order sent to the Parent by certified mail, return receipt requested on May 23, 2003, the Hearing Officer cancelled the May 30, 2003 hearing date and advised the Parent as follows:

1. Pursuant to Section 10-76h-18(a) of the Department’s Regulations, the Hearing Officer will on May 29, 2003 enter an order defaulting the Parent for failing to appear at the Pre-Hearing Conference and to comply with orders issued by the Hearing Officer *unless* the Hearing Officer receives *by 4:00 p.m. on May 29, 2003* a written statement from the Parent that she has changed her mind and wishes to participate in this proceeding. That statement may be sent by hand delivery, facsimile, e-mail or US mail to the Hearing Officer at the addresses listed below, but *must be received by* the Hearing

¹ IDEA Regulation Section 300.502 provides that a parent has the right to obtain an independent evaluation at public expense if the parent disagrees with an evaluation “obtained by the public agency” unless, among other things, the public agency initiates a hearing and the final decision is that the “agency’s evaluation is appropriate.”

Officer by no later than 4:00 p.m. on May 29, 2003. It is the Parent's responsibility to assure that any such written statement is sent by a means which will assure receipt by the Hearing Officer by 4:00 p.m. on May 29, 2003. A copy of any such statement should also be sent to counsel for the Board.

2. If that written statement is not timely received, the Hearing Officer will assume the Parent continues to be not interested in participating, and will enter a default and proceed to issue a decision on the merits based on the documentary record submitted by the Board. That decision will be issued by no later than **June 16, 2003**, and will most likely be issued substantially earlier than June 16, 2003.

3. If the Parent decides to participate and advises the Hearing Officer and Board's counsel as set forth in Paragraph 1 above, then: (a) the Parent is directed to submit to the Hearing Officer and counsel for the Board by no later than 5:00 p.m. on May 30, 2003 any documentary evidence she intends to provide at hearing along with a list of any witnesses she will present at hearing; and (b) the Parent and the Board should be prepared to proceed to a hearing. Any such hearing will take place on one of the following three days: June 5, June 6 *or* June 10 (depending in the circumstances on availability of the Board), starting at 9:00 a.m., at the Board's offices at Plainfield High School & Annex, 99 Putnam Road, Central Village, CT.

The Parent did not submit any written statement or otherwise contact the Hearing Officer.

As of the date that this final decision and order was issued, the Hearing Officer has received notification from the United States Postal Service ("USPS") that attempts on May 9 and May 15 to deliver the May 8, 2003 notice of PHC failed because it was "unclaimed" by the Parent, rather than for reasons such as incorrect address or not deliverable as addressed. That notification was in the form of a return of the May 8, 2003 mailing, unopened. Presumably, the Parent will refuse or fail to claim the May 15 and May 23 mailings as well, but these have not yet been returned to the Hearing Officer by the USPS.

Board exhibits B1 through B68 are admitted into the record as business records for evidentiary purposes. The Blair Statement is marked as Exhibit H.O. 3. The Blair Statement is not sworn but the facts asserted therein are consistent with and supported by the documentary record as a whole. In response to a request by the Hearing Officer (marked as Exhibit H.O. 4), the Board supplemented its exhibits on May 23, 2003 by submitting as Exhibit B69 page 2 of 2 a more legible copy of Exhibit B44 and as Exhibit B69 page 1 of 2 responses to specific questions asked by the Hearing Officer. Exhibit B69 is also admitted into the record as a business record for evidentiary purposes. Also at the request of the Hearing Officer (Exhibit H.O. 5), the Board provided additional clarifying information regarding an entry in one of its exhibits. The Board's response is marked as Exhibit H.O. 6. The Parent submitted no exhibits.

FINDINGS OF FACT:

To the extent that the procedural summary includes findings of fact or conclusions of law, that the findings of fact are conclusions of law, or that the conclusions of law are findings of

fact, they should be so considered without regard to their given labels. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993). Citations to documentary exhibits are for illustrative purposes and not meant to exclude other admissible evidence in the record supporting that finding.

1. The Student is presently attending the 8th grade at a Board middle school. She has attended the Board's public schools throughout her academic career. She has received remedial services in Language Arts and/or Math throughout her academic career, but has not previously been identified as eligible to receive special education and related services from the Board pursuant to the Individuals with Disabilities Education Act (the "IDEA"), 20 U.S.C. Secs.1401 *et seq.*, and its implementing regulations codified at 34 C.F.R. Secs. 300 *et seq.* (the "IDEA Regulations"), and under Connecticut's special education laws, Conn. Gen. Stat. Secs. 10-76 and related regulations.
2. In January 1995, the Student (then in the 1st grade) was administered the Einstein Assessment of School-Related Skills (the "Einstein"). She showed skill deficits in Language/Cognition, Word Recognition, Oral Reading, Reading Comprehension and Auditory Memory, and satisfactory performance in Arithmetic and Visual-Motor Integration. (B5) Her classroom teacher reported satisfactory conduct overall, with difficulties in reading comprehension, ability to express ideas orally and in writing, completion of homework, working independently, making good use of time, and following directions. (B7)
3. The Student repeated her 1st grade year due to her academic skill deficiencies. (B18)
4. In October 1996 the Student, then in the 2nd grade, was administered the MAT. She attained below grade level performance in the reading comprehension, and math concept and problem segments of the MAT. Her performance overall was below grade level, with low average performance on the language segment. (B11) The Student was referred to a remedial reading program. (B8). While the record suggests some overall improvement in academic skills over the course of the 2nd grade, she continued to manifest difficulties with reading comprehension, understanding math concepts and using problem solving skills in math. (B9; B12)
5. The Student entered the 3rd grade in the 1997-1998 academic year. She was again referred to remedial services, now for both Language Arts and Math. (B13) She did show some overall improvement in her academic competencies as measured by the Einstein (B15), but her teachers remained concerned about poor performance in arithmetic. (B16) According to her teachers, she "does not seem to have any number sense [and] has a great deal of difficulty [with performing various arithmetic functions]." (B14)
6. On November 20, 1997, the Board noticed a PPT to discuss a referral to special education services. (B19) The PPT convened on December 2, 1997 with the Parent in attendance. The Student was noted to be showing "difficulty in all areas" particularly in math, where her performance was described as being at a 1st grade level. The Student reportedly stated that she was having difficulty "concentrating on her assignments." Her handwriting was described as "messy." Word recognition skills were reportedly close to grade level. The

PPT recommended that an educational and psychological assessment be performed, along with a social developmental history. The Parent gave her consent for this assessment. (B20) The Board's primary concern appears to have been to rule out a specific learning disability in math. (B26)

7. Completion of the planned assessment was delayed to determine whether the Student's hearing was impaired due to the fact that she failed a hearing screening at school. (B21)
8. The planned assessment was completed in April 1998. The Student (then 9 years 3 months old and in the 3rd grade) was administered a psycho-educational evaluation which consisted of the Kaufman Assessment Battery for Children (K-ABC), a review of her school records and consultation with school staff. The K-ABC was selected to assess the Student's mental process when listening skills are not emphasized. (B-23) The evaluation report states as follows, among other things:
 - a. When presented with novel tasks or unfamiliar directions, the Student manifested uncertainty and confusion but was eventually able to be successful following modeling, teaching or rephrasing of the directions.
 - b. "Items that required more abstract thinking and reasoning were consistently difficult" for her.
 - c. The Student's overall performance on the K-ABC was in the low average range of intellectual functioning.
 - d. The Student's score on the K-ABC suggests that her sequential problem solving abilities are average, with a concomitant weakness in simultaneous processing skills (the capacity to integrate information from diverse sources), a skill deficit that "will make many higher level intellectual functions difficult" for the Student. Her score on other components of the K-ABC indicates that the Student is likely to have difficulties with analogical reasoning.
9. As part of the assessment, the Student was also administered a "cognitive and educational evaluation" which included the following portions of the Woodcock Johnson Psycho-Educational Battery – Revised ("WJ-R"): the WJ-R Tests of Cognitive Ability ("TOCA") (a measure of academic functioning and cognitive abilities) and the WJ-R Tests of Achievement (a measure of various aspects of scholastic achievement). The report of this evaluation (B-24) reveals the following as to the Student's performance on the WJ-R TOCA:

Subtest Name	Skill Assessed	Score/Chronological Age Equivalent
Broad Cognitive Ability	Overall intellectual functioning based on short-term memory, comprehension-knowledge, visual processing, auditory	Average range; 7.3

	processing, long-term retrieval, fluid reasoning and processing speed	
Comprehension-Knowledge	Assessment of the breadth and depth of knowledge and ability to verbally communicate and reason using previously learned procedures	Average range; 8.3
Quantitative Ability	Ability to comprehend quantitative concepts and relationships and to manipulate numerical symbols	Low average; 8.0
Short Term Memory	Ability to hold information in immediate awareness and then use it within a few seconds.	Average range; 7.2
Visual Processing	Ability to analyze and synthesize visual stimuli	Average range; 10.5
Auditory Processing	Ability to analyze and synthesize auditory stimuli	Average range; 11.10
Long Term Retrieval	Ability to store information and fluently retrieve it later through association	Average range; 9.4
Fluid Reasoning	Ability to reason, form concepts and solve problems using unfamiliar information or novel procedures.	Low average range; 7.0
Processing Speed	Ability to rapidly perform automatic cognitive tasks, particularly when under pressure to maintain focused attention.	Average range; 8.6

10. The report of this evaluation reveals the following performance on the WJ-R Tests of Achievement:

Subtest Name	Skill Area Assessed	Score/Chronological Age Equivalent
Basic Reading Skills	Ability to identify sight vocabulary and apply phonic and structural analysis skills.	Average; 9.2
Reading Comprehension	Comprehension of single word stimuli and short passages.	Average; 9.9 (with significant variability in performance)

Basic Mathematics Skills	Computational skills and knowledge of mathematical concepts and vocabulary	Low Average; 7.10
Mathematics Reasoning	Ability to analyze and solve practical mathematics problems	Low Average; 7.7
Basic Writing Skills	Knowledge of punctuation and capitalization, spelling, word usage, the ability to detect and correct errors in written passages.	Average; 8.6
Written Expression	Production of simple sentences with ease as well as writing increasingly complex sentences to meet varied demands.	Average; 9.5
Broad Knowledge	Assessment of knowledge of general information in science, social studies and the humanities.	Average; 8.0

11. Overall, this assessment showed no significant aptitude/achievement discrepancies in Reading Aptitude, Mathematics Aptitude, Written Language Aptitude or Knowledge Aptitude.
12. A PPT was convened on May 15, 1998 to review the results of the assessment. The Parent attended that PPT. The PPT concluded that the Student was not eligible for special education and related services due to a specific learning disability or, for that matter, any other disability. (B28)
13. The Student's 3rd grade final report card, issued after the May 15, 1998 PPT, shows that she was having difficulty with reading comprehension, with aspects of the arithmetic curriculum and with use of appropriate writing conventions (e.g., punctuation). (B29)
14. In September 1998, the Student, then attending the 4th grade in the Board's schools, was administered the Connecticut Mastery Test ("CMT"). She scored "well below" the statewide goal for mathematics, manifesting difficulties with conceptual understanding and problem solving abilities. She also scored "well below" the statewide goal for reading. She scored at or above the statewide goal on the Writing Sample segment. (B30)
15. The Student's final report card for the 4th grade reveals that she received an A- for general conduct, Bs in Written Language, Spelling and Science & Health, a C- in Reading Comprehension, a D in Mathematics and a D- in Social Studies. Teacher comments indicate that despite "working very hard" she was still "struggling." Other comments indicate that she is disorganized, does not use time wisely, is generally unprepared, does not complete homework and earned reduced grades due to missing work. (B31)

16. The Student's grades for the first and second marking periods of the 5th grade continued to show good conduct. However, her performance in her core academic classes declined significantly. She earned primarily Ds and Fs in her core academic classes, but B level grades in art and physical education. Teacher comments to that point indicate that the Student was "generally unprepared" and was receiving reduced grades due to missing work. (B35)
17. The Student transferred to another school in the middle of the 5th grade. Her report card for the second half of the 5th grade showed grades in her core academic classes ranging from Cs to Fs, with a C in Music, a B- overall in art and an A- overall in physical education. Teacher comments from this half of the year indicate that the Student respected authority and was very cooperative, but did not use her time wisely, showed poor class participation, was generally unprepared, was easily distracted, did not complete homework, attained reduced grades due to missing work and lacked neatness in her written work. (B35)
18. In September of 2000, the Student (now a 6th grader in the Board's schools) was administered the CMT. Further evidencing the decline in her performance, she scored in the "intervention level" in mathematics and reading segments and "well below" grade level on the writing segment. (B37) Based on these test results, the Student was referred again to remedial services for reading and arithmetic. (B38; B43)
19. During this academic year, the Student began accruing a significant number of unexcused absences. (B39)
20. By January 22, 2001, the Student's performance had declined so much (she was reportedly "failing in all areas") that the Board advised the Parent that the Student was "in danger of being retained" in the 6th grade. The Student was noted to have had difficulties with academics since 1st grade, that her academic progress has been "nil" (presumably that academic year) despite a number of interventions (including twice weekly remedial services since October 2000), and that the Parent and Board staff had agreed that her "gaps are now large enough that a learning disability needs to be ruled out" again. Among other problems it was noted that the Student's comprehension skills were "weak," that she had "no recall of factual or inferential information read orally," and that she exhibits "poor decoding/word attack skills, poor comprehension, general lack of understanding and focus on material, [and] loss of place." (B41)
21. On January 23, 2001, the District sought permission to perform an evaluation of the Student's academic achievement and cognitive processing. (B40)
22. A PPT was convened on January 31, 2001. The PPT recommended an evaluation of the Student based on her failing grades in all major academic areas. (B42) The Parent is not identified in the minutes of that PPT as an attendee at that PPT, and the Board reported that it has been unable to locate the notice of that PPT that would have been sent to the Parent. (B69 1 of 2) The Blair Statement indicates that the Parent refused to give her consent to the evaluation proposed at this PPT. (H.O. 3)

23. The Student's report card for the 2000/2001 academic year shows weak performance in Language Arts, Reading, Math, Science and Social Studies, with stronger performance in Art, Comparative Literature, Family Science, French, Music, Chorus, Physical Education and Spanish. (B44; B69)
24. The Student's permanent record card shows a gradual deterioration in academic performance in core subject areas from the 4th grade through the 6th grade, with considerable variability in her grades. (B45)
25. Upon entering the 7th grade in the 2001/2002 academic year, the Student was administered the CMT. The results indicated that she has not mastered any of the strands in the Mathematics or Language Arts (Editing and Revising) segments of the CMT and had mastered 1 of 3 strands in the Language Arts (Reading Comprehension) segment. (B46)
26. In September 2001, again based on CMT results, the Student was referred to a remedial services program for Reading and Math. In this program, the Student was receiving instruction in a classroom of 10-15 students with similar abilities. (B47)
27. The Student again began accruing a significant number of unexcused absences. (B48)
28. On November 29, 2001, the District recommended that the Student attend an after school program called Partners for Success, which provides after school extra-help and mentoring to support the Student's performance in school. (B49) It is not clear from the record whether the Student attended this program.
29. On December 20, 2001, it was noted by the Student's CORE team that communication with the Student's home is "minimal," the Student does not appear to be concerned with failures, and that the Student was having "difficulty attending in class." The notes recommend contacting the Parent to obtain permission for academic and social-emotional evaluations. (B50 at 1)
30. On December 13, 2001, the Student's remedial reading teacher noted that the Student's oral fluency was age appropriate, but that her "comprehension was weak due to inability to focus on task. She can verbally retell/recount what's going on, but has an extremely short attention span [and] needs to be redirected constantly. Tends to be more interested in what's going on around her than in what we're doing." The teacher noted further that she student has done "virtually no assignments" in the first marking period and was doing "only slightly better now." The teacher reported further that the Student "seems to understand then totally forgets it the next day" and that when the Student "gets a poor grade she doesn't seem upset, worried or even concerned." (B50 at 2-3)
31. On January 24, 2002, the Board noticed a PPT for February 5, 2002 to discuss a referral to special education and consider an evaluation. (B51)
32. That PPT was not convened. (B69 1 of 2) Documentation prepared in connection with

that PPT indicates that Board staff reported that the Student “does not follow along in class,” has been “missing” from class, has told teachers that she “doesn’t ‘remember’ to do her homework,” has a “hard time concentrating,” and “learn[s] something and soon after can’t remember what it was.” (B-53)

33. The Student’s report card through February 5, 2002 of the 7th grade year shows that her grades ranged between F and C in all areas in the first marking period, and between F and C in all areas but music in the second marking period. In music she earned an A+. The following teacher comments were noted by her teachers other than the music teacher: “inconsistent effort,” “continually absent from school,” “inconsistent or poor work habits,” “easily distracted,” “often unprepared for class,” “after school help recommended,” “project incomplete,” and “more effort needed.” The music teacher reported that the Student was a “pleasure to have in class” and showed creativity. (B54)
34. Exhibit B52 is a consent form dated February 5, 2002 for an evaluation of the Student’s intellectual, psychosocial, emotional, academic and perceptual functioning. (B52) The form is unexecuted. The Blair Statement indicates that parental consent for the evaluation was requested in February 2002 but refused. (H.O. 3)
35. On February 14, 2002, the District advised the Parent that the Student was being considered for retention in the 7th grade because she was failing Language Arts, Science, Math and Social Studies. Among other things, the District recommended that the Student begin attending the “Saturday Academy” program for additional assistance with Reading/Language Arts and Math. (B56) It is not clear from the record whether the Student attended that program.
36. On February 22, 2002, the District again recommended that the Student attend the Partners for Success after school program. (B57) It is not clear from the record whether the Student attended that program.
37. On April 24, 2002, the District again recommended that the Student attend the Partners for Success after school program. (B58) It is not clear from the record whether the Student attended that program.
38. The Student was exited from the remedial reading program in June 2002 because the program was discontinued at the school she was attending. (B59)
39. The Student’s final report card for the 2001/2002 academic year, shows grades ranging from D+ to F in the core subject areas (Language Arts, Reading, Math, Science and Social Studies), and grades ranging from A+ (Art) to D+ (Music) in various electives. (B60)
40. On June 21, 2002, the Parent was notified that the District was granting the Student a “social promotion” to the 8th grade despite the fact that she had failed two or more core academic courses. The District observed that the Student “has demonstrated that she is capable of meeting the expectations of the seventh grade but has not fulfilled the requirements throughout the year.” (B61)

41. The Student was administered the CMT in September 2002 upon entering the 8th grade. She scored below “basic level” on the Mathematics and Reading segments of the CMT. She performed at the “proficient level” on the Direct Assessment of Writing segment. Students performing at that level reportedly “produce fluent, somewhat developed and adequately elaborated papers with general and specific details” and show “satisfactory to strong organizational strategy with a progression of ideas and transitions.” (B62)
42. On November 5, 2002, the Student’s Guidance Counselor advised the Parent that the Student was “really struggling academically” and that she has had “numerous failures” academically over the past two years. The Guidance Counselor suggested “basic testing to see if [the Student] qualifies for extra help,” noting that in the 1999/2000 academic year testing had been proposed but that the Parent had not returned a signed consent form to the District. (B63)
43. On November 7, 2002, the Board noticed a PPT for November 19, 2002 to discuss a referral for special education services. (B64)
44. The Parent attended the PPT on November 19, 2002, at which the Board recommended that a psychological and educational evaluation of the Student be conducted. (B65) The Board proposed to assess the Student’s intellectual functioning with the Wechsler Intelligence Scale for Children (the “WISC-III”), her academic and cognitive functioning with the Wechsler Individual Achievement Test (the “WIAT”) and the WJ-R, including the TOCA if necessary, her social-emotional functioning and problem solving with the Achenbach checklist, her perceptual-motor functioning with the Bender Visual Motor Gestalt Test, and her attention with the Connors rating scales. (B67)
45. The Student’s report card dated April 7, 2003 shows that the Student had earned an F in both the first and second marking periods in Language Arts, in Developmental Reading, in Math, in Science and Social Studies. In these classes, the teacher comments were as follows: “poor quiz grades,” “make-up work not completed,” “inconsistent or poor work habits,” “classwork incomplete/missing,” “shows apathy toward self-improvement,” “socializing interfering w/academics,” “inconsistent effort,” “disrupts class often,” “immature behavior,” “disorganization interferes with success,” “easily distracted,” “poor test grades,” and “more effort needed.” She had earned a C+ in Spanish, an A+ in Art and an A- in Family Science. The teachers in these classes noted that the Student was a “pleasure to have in class,” showed “excellent effort” and had “good class participation.” (B68)
46. The Blair Statement (H.O. 3) suggests that the Board sought permission to conduct an initial evaluation in January 2001 and February 2002 and that the Parent refused consent for an evaluation on both occasions. Presumably, if asked to testify, Mr. Blair would attest to these facts under oath. However, the documentary record as it presently exists is not clear as to these claims, and the Hearing Officer reaches no determination on this record.

CONCLUSIONS OF LAW

1. Pursuant to Conn. State Agency Regs. Section 10-76h-18, the Parent is defaulted for failure to appear or participate in the Pre-Hearing Conference, and for failure to otherwise comply with orders of the Hearing Officer, including orders that she personally and directly confirm with the Hearing Officer that she had no interest in participating in this proceeding, or was otherwise refusing to do so.
2. Pursuant to the IDEA and applicable Connecticut special education laws, the Board is required to provide children identified as eligible for special education and related services in its jurisdiction with a free and appropriate public education in the least restrictive environment. The Board's obligations under these laws include undertaking an evaluation where indicated to determine whether a child is eligible to receive special education and related services and what services, if any, are required. *See, e.g.*, Conn. Gen. Stat. Sec. 10-76d(a)(1), which provides that the Board must, among other things, provide "professional services requisite to the identification of school-age children requiring special education, identify each such child within its jurisdiction [and] determine the eligibility of such children within its jurisdiction . . ." The Board completed a psycho-educational evaluation of the Student in 1998, which indicated that the Student was not eligible to receive special education and related services on the basis of a specific learning disability. However, that same record reveals that the Student has been struggling academically over her entire academic career, has received remedial services over her academic career and that, notwithstanding those services and her reported efforts to succeed, may no longer be able to succeed academically. The Student's difficulties do not appear to be willful (e.g., refusal to perform). The Student is described as inattentive, disorganized, lacking in focus, disruptive, immature in her behavior, as having difficulty recalling material she has learned and as apathetic or unconcerned about her academic performance. Her performance in core academic subjects has deteriorated over time, such that in this academic year she is failing in all of those areas. However, she does well in electives, particularly art. Collectively, these are all indicators of one or more disabilities which may qualify the Student for special education and related services. Accordingly, the Board's initiative in proposing and pursuing a psycho-educational evaluation of the Student is reasonable, appropriate and consistent with its obligations under Federal and State law.
3. Prior to undertaking any such evaluation, the Board must notify the Parent of its intent to conduct an initial evaluation of a child and obtain parental consent for the evaluation. *See, e.g.*, IDEA, 20 U.S.C.A. Secs. 1414(a), 1415(b)(3)(A); IDEA Regulation Section 300.505; Conn. Gen. Stat. Sec. 10-76d(a)(8). The Board attempted to secure written consent of the Parent for its proposed evaluation in connection with the November 19, 2002 PPT. (B65-B67; H.O. 3)
4. The provision of written notice of the intent to conduct an initial evaluation triggers the due process protections afforded the child under the IDEA and State special education laws. The IDEA, 20 U.S.C.A. Sec. 1414(a) provides that "If the parent [of a] child refuse[s] consent for the evaluation, the [Board] may continue to pursue an evaluation under [20 U.S.C.A. Sec. 1415] except to the extent inconsistent with State law relating to parental

consent.” IDEA Regulation Section 300.505 provides further that “If the parents of a child with a disability refuse consent for initial evaluation . . . the agency may continue to pursue those evaluations by using the due process procedures under [IDEA Regulations] Secs. 300.507-300.509, or the mediation procedures under [Sec.] 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.”

5. Conn. Gen. Stat. Sec. 10-76h(d)(1) provides that the Hearing Officer has the authority to “confirm, modify or reject the . . . evaluation [of a child to determine whether the child is eligible to receive special education and related services and in] the case where a parent . . . has refused consent for evaluation [for] special education, the [Hearing Officer] may order special education evaluation . . . without the consent of such parent.” Accordingly, the Hearing Officer has jurisdiction to resolve the issue presented by the Board herein.
6. Conn. Gen. Stat. Sec. 10-76h(d)(3) provides further that if the Hearing Officer finds that the proposed evaluation is warranted and appropriate, the Board may proceed with its evaluation without the consent of the parent. If the nonconsenting parent appeals a decision of the Hearing Officer authorizing such an evaluation, the evaluation may not be undertaken subject to resolution of the appeal.
7. The IDEA’s implementing regulations, 34 CFR Secs. 300.532 – 300.533 provide that in performing an initial evaluation, the Board, among other things, must use a variety of standardized tests, assessment tools and strategies to gather relevant functional and developmental information about the child. If standardized tests are utilized they must be validated and administered by trained and knowledgeable personnel. Further, the assessment overall must be sufficiently comprehensive to determine whether the child is eligible to receive special education and related services and, if so, under what classification.
8. The evaluation proposed by the Board in connection with the November 19, 2002 PPT, as described in Exhibits B65 and B67, satisfies the requirements of the IDEA and State special education laws.
 - a. Pursuant to Conn. State Agency Regs. Sec. 10-76h-15(f), and based on the Hearing Officer’s training and experience in clinical psychology and as a Hearing Officer, the Hearing Officer takes administrative notice that: (1) the WISC is a standardized and validated assessment of intellectual functioning, generally recognized in the professional community as used for that purpose; (2) the WIAT and the WJ-R, including the TOCA, are standardized and validated assessments of academic achievement and cognitive abilities and functioning, generally recognized in the professional community as used for that purpose; (3) the Achenbach checklist is a standardized and validated assessment of social-emotional functioning and problem solving competencies, generally recognized in the professional community as used for that purpose; (4) the Bender Visual Motor Gestalt Test is a standardized and validated measure of visual-motor integration, generally recognized in the professional community as used for that purpose; and (5) the Connors rating scale is a standardized and validated assessment of various types of pathology in children and

adolescents, including but not limited to Attention Deficit Hyperactivity Disorder or Attention Deficit Disorder, and is generally recognized in the professional community as used for that purpose.

- b. The Board proposed to have a psychologist administer the WISC, the Achenbach scales, the Bender Gestalt and the Connors scales and a special educator administer the WJ-R (including the TOCA if necessary) and the WIAT. Presumably the specific individuals who would administer these assessments are Board employees who are appropriately certified or licensed to do so.
 - c. There are no indications in the record that the Student's primary language is other than English or that other conditions exist that would require a specifically modified format for administering any of these assessments.
9. The Board's proposed evaluation encompasses the Student's intellectual, academic and social-emotional functioning, her perceptual motor and processing competencies, and her attentional abilities. These are all identified areas of concern, based on her academic records over the long term and based on more current teacher observations. The proposed evaluation is therefore sufficiently comprehensive in light of her level of functioning both in November 2002 and as of the date of the request for due process. Accordingly, the proposed evaluation is "appropriate."
10. The Board appropriately attempted to secure permission from the Parent to perform this evaluation at and in connection with the November 19, 2002 PPT, and the Parent has refused to consent to the evaluation. It is not possible to ascertain from this record the specific reason or reasons the Parent objects to this evaluation or refuses to allow the Board to complete it.

FINAL DECISION AND ORDER

1. The evaluation proposed by the Board in November 2002, as reflected in Exhibits B65 and B67 is appropriate and the Board may proceed with that evaluation in accordance with the applicable provisions of Federal and State law.