

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Shelton Board of Education v. Student

Appearing on behalf of the Student: Parent, Pro Se

Appearing on behalf of the Board: Attorney Christine L. Chinni
Chinni & Meuser, LLC
One Darling Drive
Avon, CT 06001

Appearing before: Ann F. Bird, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Shelton Board of Education (Board) conduct neuropsychological, psychoeducational and/or psychosocial evaluations of the Student?
2. If so, were the Board's neuropsychological, psychoeducational and/or psychosocial evaluations appropriate?
3. If not, is the Student entitled to an independent neuropsychological, psychoeducational and/or psychosocial evaluation at the Board's expense?

PROCEDURAL HISTORY:

The Board filed this case with the State of Connecticut Department of Education, Bureau of Special Education on May 2, 2013. This Hearing Officer was appointed on May 6, 2013. The date for mailing the decision was initially established to be June 14, 2013.

The hearing convened on June 13, 2013. The parties requested that the decision date of June 14, 2013 be extended to accommodate the hearing date and briefing schedule. Consequently, the decision date was extended to August 12, 2013.

The Board's witnesses were the School Psychologist, the School Social Worker, the High School Head Master and the Assistant Director of Special Education (Assistant Director). The Student's witness was the Student's Parent.

The Student submitted proposed Exhibits numbered S 1 through S 16. Objections to Exhibits S 2 and S 4 through S 7 were sustained. The remaining Student Exhibits were entered as full exhibits. The Board submitted proposed Exhibits numbered B 1 to B 9,

which were all entered as full exhibits. Additionally, Exhibit HO 1 was entered as a full exhibit.

The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supporting evidence in the record. All evidence presented was considered in deciding this matter.

All motions and objections not previously ruled upon, if any, are hereby overruled. To the extent a procedural claim raised by the Board of Education or the Student is not specifically addressed herein, this Hearing Officer has concluded that the claim lacked merit.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, *see SAS Institute, Inc. v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

SUMMARY:

The Student initiated a referral for evaluation of eligibility for special education and related services. Psychoeducational and Psychosocial Evaluations were obtained, and reviewed by the Planning and Placement Team (PPT). The Student disagreed with those evaluations and requested independent evaluations at the Board's expense. The Board filed this case to establish that the evaluations it obtained are appropriate. After considering the evidence presented and the arguments of the parties, the hearing officer decided that the Board's evaluations are appropriate and that the Student is not entitled to independent evaluations at the Board's expense.

STATEMENT OF JURISDICTION:

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

FINDINGS OF FACT:

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student was born on August 25, 1996, and is now sixteen years of age. He attends Shelton High School, and has never been identified as a student with a disability, eligible for special education and related services. (Exh B 3; Testimony of Assistant Director (hereafter "Assistant Director"))

2. On November 6, 2012, the Board’s Superintendent of Schools notified the Student’s Parents of the Superintendent’s request that the Board conduct an evidentiary hearing to consider expulsion of the Student. In addition, the Superintendent notified the Student’s parents that the expulsion hearing was scheduled to take place on November 19, 2012. (Exh B 1)
3. Thereafter, the Student’s Parent and Attorney requested that the Student be referred for evaluation of possible eligibility for special education and related services, as a student with a disability. (Assistant Director)
4. The Board’s Assistant Director made a referral for such an evaluation on December 10, 2012. (Exh B 2)
5. A PPT meeting was conducted on December 18, 2012 to address the referral. The Student’s Parent and Attorney attended the meeting. (Exh B 3)
6. The PPT decided to conduct a complete psychoeducational assessment of the Student. The PPT designed an Evaluation that included examination of cognitive functioning, academic achievement, behavior, auditory processing and attention as well as a social work appraisal. (Exh B 3)
7. The PPT, including the Student’s Parent and Attorney, discussed and agreed upon the specific assessment instruments that would be used in the Evaluation, including even discussion and agreement on several specific protocols and subtests that would be included. (Exh; Assistant Director; School Psychologist)
8. The Student’s Parent signed a consent form for the Evaluation that identified the following as the “Test(s)/Evaluation Procedure(s)” and “Area(s) of Assessment” that would be included in the evaluation process:

| | |
|--|----------------------|
| Wechsler Scales | Intelligence |
| Woodcock Johnson | Achievement |
| BASC – II | Behavioral/Emotional |
| Rating Scales | Behavioral/Emotional |
| Social/Work Assessment | Behavioral/Emotional |
| Other subtests upon Psychologists’ discretion | Attention Deficit |
| NEPSY-II | Auditory Processing |

(Exh B 3)

9. The School Social Worker performed a social work review and issued a report entitled “Social Work Psycho Social Assessment” on January 11, 2013. (Exh B 4).
10. The School Social Worker’s report included a summary of the Student’s School, Developmental/Social History and Family History. In putting together her report, the

School Social Worker used standard professional protocols, including reading the Student's education file and interviewing the Student's Parent. (School Social Worker; Exh B 4)

11. The School Social Worker is trained and experienced in the field of school social work. She holds a masters degree in school social work and has been employed as a school social worker for more than ten years. She is certified by the State of Connecticut Department of Education to serve as a school social worker. (School Social Worker; Exh B 4)
12. The School Social Worker concluded that the Student had been under various stressors and that he may lack the ability to take responsibility for his actions. Additionally, she reported that the Student has little motivation for academic performance and that he may not have appropriate coping skills to deal with disappointment. (School Social Worker; Exh B 4)
13. The remaining elements of the Evaluation were performed by the School Psychologist in January 2013 and summarized in her report entitled "Psychoeducational Evaluation" dated February 5, 2013. (Exh B 5)
14. The School Psychologist reviewed the Student's education file and administered the following assessment instruments:

A. Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV) also known as "Wechsler Scales". This instrument measures a person's cognitive ability, or intellectual functioning. The School Psychologist administered specific subtests in the areas of Verbal Comprehension (Similarities, Vocabulary and Information); Perceptual Reasoning (Block Design, Visual Puzzles and Matrix Reasoning); Working Memory (Digit Span and Letter Number Sequencing); and Processing Speed (Coding and Symbol Search). Additionally, she developed composite scores in the areas of Verbal Comprehension, Perceptual Reasoning, Working Memory and Processing Speed;

B. Woodcock-Johnson III Tests of Achievement (WJ ACH III). This instrument measures academic achievement. It was selected to assess the Student's skills in the areas of reading, math and written expression. Specific subtests in Letter-Word Identification, Reading Fluency, Calculation, Math Fluency, Spelling, Passage Comprehension and Writing Samples were administered;

C. Developmental Neuropsychological Assessment – Second Edition (NEPSY-II). This assessment measures neuropsychological development. It is the most widely used instrument to identify neuropsychological problems in students. Specific subtests were selected to measure neuropsychological development in the domains of Attention and Executive Functioning (Animal Sorting – Total Correct Sorts, Animal Sorting Combined, Clocks, Inhibition - Naming Combined, Inhibition – Inhibition Combined, and Inhibition – Switching Combined) and Memory and

Learning (Memory for Faces Total, Memory for Faces Delayed, Memory for Names, Memory for Names Delayed, Memory for Names + Delayed, Narrative Memory Total, Narrative Memory Free and Cued Recall Total, Narrative Memory Recognition total score, Memory for Designs Content, Memory for Designs Spatial and Memory for Designs total);

D. Behavior Assessment System of Children – Second Edition (BASC-II). This instrument is designed to shed light on a student's behaviors and emotions at school and in the home/community environments. In this case, Teacher Rating Scales from three of the Student's teachers, the Parent and the Student's Self-Report were obtained in the five main areas of Externalizing Problems, Internalizing Problems, Behavior Symptoms, Adaptive Skills and School Problems;

E. RCMAS-2 Scale. This rating scale was used to identify the Student's level of anxiety; and

F. Emotional Profile Index. This rating scale was employed to obtain information about the Student's view of his own emotional functioning.

(School Psychologist; Assistant Director; Exh B 5)

15. The School Psychologist is well qualified as a school psychologist, and has significant training and experience in the administration and interpretation of the assessments that she used. She is certified by the State of Connecticut Department of Education to work as a school psychologist in public schools in Connecticut. She has a bachelor's degree in Psychology and a master's degree and sixth year certificate in School Psychology. She has been employed as a school psychologist with the Board for thirty-four years. (School Psychologist)
16. The instruments and assessments that the School Psychologist used are all widely used by school psychologists and relied on by planning and placement teams in Connecticut public schools. Moreover, they were specifically selected with the input of the Student's Parent and Attorney. (School Psychologist; Assistant Director; Exh B 5)
17. There were no assessments, assessment instruments, protocols or subtests that the Student or his Parent or Attorney requested that were not administered. (School Psychologist; Assistant Director)
18. Absent any evidence to the contrary, a presumption of regularity establishes that these assessments were administered under standard terms and conditions, in a language and form likely to yield accurate information and that they are not racially or culturally biased. (*See United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926) (presumption that public official complies with established standards of performance) and *Guidelines for the Practice of School Psychology*, Connecticut

State Department of Education (2004))

19. The Student's scores on the WAIS-IV and WJ ACH III tests of cognitive functioning and academic achievement respectively were almost entirely¹ in the average and above average ranges. (Exh B 5)
20. The congruence of the Student's WAIS-IV and WJ ACH III scores reveals that the Student's academic achievement is generally commensurate with his intellectual functioning. This, in turn, suggests that the Student does not suffer from a learning disability or processing disorder. (School Psychologist; Assistant Director; Exh B 5)
21. Likewise, the Student's scores on the NEPSY-II Assessment of Attention and Executive Functioning subtests were at or above average. His scores on the NEPSY-II Assessment of Memory and Learning subtests were all "At Expected Level" except for Memory for Names Delayed, which was "Below Expected Level." These test results suggest that the Student does not have deficits in the areas of executive functioning, attention or auditory processing. (School Psychologist; Assistant Director; Exh B 5)
22. The BASC-II's assessment of Social-Emotional Functioning produced some scores in the "At-Risk" and "Clinically Significant" ranges on the Teacher reports as well as on the Parent's report. The Student's self report included no At Risk or Clinically Significant behaviors. (Exh B 5)
23. The RCMAS-2 and Emotional Profile Index rating scale results were partially inconsistent with information in school records, suggesting that the Student might not have been truthful in some of his responses.
24. The Evaluation as a whole included a variety of tools and measures that are widely used in the fields of school psychology and school social work, and that are recognized as technically sound ways to gather information relevant to identification of a student's possible disabling condition. (School Psychologist; Assistant Director; School Social Worker; Exhs B 4 and B 5).
25. The Evaluation also satisfied the PPT's directive to evaluate the Student in specific domains. The Student's cognitive functioning and academic achievement were evaluated through the WAIS-IV as well as the WJ ACH III, NEPSY-II, and Social Work Assessment. Behavior ratings were conducted through the BASC-II, RCMAS-2 and Emotional profile Index. The Student's auditory processing and attention were assessed through the WAIS-IV, WJ ACH III, NEPSY-II, Social Work Assessment and various behavior ratings.

¹ Only the Student's scores on the WAIS-IV subtest of Working Memory and on the WJ ACH III subtests of Math Calculation and Math Fluency were in the "low average" category. (Exh B 5)

26. The Student's PPT convened on March 26, 2013 to review the Evaluation. The Student's Parent attended the meeting but his Attorney did not. (Exh B 7)
27. After reviewing the Evaluation, the PPT decided that the Student is not disabled and is not eligible to receive special education and related services. (Exh B 7)
28. The Student's Parent requested independent neuropsychological, psychoeducational and psychosocial evaluations. In response, the Board denied these requests and initiated this case. (Exh B 7)
29. The Superintendent also rescheduled the expulsion hearing, which had been delayed by agreement of the parties until the Evaluation was completed. (Exhs B 8 and B 9) The Board conducted an expulsion hearing on April 17, 2013 and accepted the Superintendent's recommendation for expulsion of the Student. (Exh B 9)
30. The Student's PPT never addressed the question of a neuropsychological evaluation and consequently did not direct that one be conducted. (Exhs B 3 and B 7)
31. The Board never conducted a neuropsychological evaluation of the Student. (Exhs B 3 and B 7)

CONCLUSIONS OF LAW AND DISCUSSION:

1. A board of education must provide an independent evaluation at no cost if requested by a student who disagrees with an evaluation already obtained by the board. The board may avoid this obligation only by proving, at a due process hearing, that its evaluation is "appropriate." 20 U.S.C. §1414(b); 34 C.F.R. §300.502(b).
2. In this case, the Student requested independent evaluations in three areas – neuropsychological, psychoeducational and psychosocial. The first area – neuropsychological - was never the subject of an evaluation obtained by the Board with which the Student could possibly disagree. Accordingly, the Board has no obligation to pay for an independent neuropsychological evaluation of the Student. Id.
3. If the Student believes that a neuropsychological evaluation is necessary, he may request that his PPT direct that the Board obtain one. If the PPT refuses such a request, the Student may challenge the PPT's decision through the due process hearing procedure. 20 U.S.C. §§1415; 34 C.F.R. §300.507; and C.G.S §10-76h. That is not, however, the posture of this case, which was instead initiated by the Board pursuant to its obligations under 20 U.S.C. §1414(b) and 34 C.F.R. §300.502(b).
4. An "appropriate" evaluation is one that: (a) uses a variety of tools and strategies to gather information relevant to identification of a student as having a disability and/or the content of a student's individualized education program; (b) does not rely on any

single measure or assessment as a sole criterion; (c) uses technically sound instruments; (d) does not discriminate on a racial or cultural basis; (e) is selected and administered in a language and form most likely to yield accurate information; (f) is used for purposes for which it is valid and reliable, and is administered by trained and knowledgeable personnel in accordance with provided instructions; (g) assesses all areas of suspected disability; and (h) uses tools and strategies that provide information relevant to meeting the student's needs. 20 U.S.C. §1414(b); 34 C.F.R. §300.502(b); *Warren G. v Cumberland County School Dist.*, 190 F.3d 80, 87 (3rd Cir. 1999).

5. The Evaluation conducted by the School Psychologist and School Social Worker relied on a variety of tools and strategies to gather information relevant to whether the Student has a disability. It did not use any single measure or criterion.
6. The Evaluation also employed instruments that are widely used in public schools in Connecticut for the same purposes, that are technically sound, that are not discriminatory and that are likely to yield accurate information.
7. Additionally, the instruments and protocols used by the School Psychologist and School Social Worker were used for the purposes for which they were designed, and provided information needed to assess the Student's educational needs.
8. The instruments and protocols selected also assessed all areas of suspected disability. In particular, the Evaluation investigated the possibility of a learning disability as well as deficits in executive functioning, attention, auditory processing and memory that the Student's Parent and Attorney suspected might exist.
9. Notably, the widely used NEPSY-II instrument was administered to shed light on the Student's executive functioning, auditory processing, attention, learning and memory. The results demonstrated that the Student's functioning in these areas is at least average.
10. In conclusion, the Evaluation obtained by the Board and conducted by the School Psychologist and School Social Worker was an appropriate Psychoeducational Evaluation. Id.
11. To the extent that a "Psychosocial Evaluation" may be distinct from a "Psychoeducational Evaluation," the Evaluation obtained by the Board and conducted by the School Psychologist and School Social Worker was also an appropriate Psychosocial Evaluation. Id.

FINAL DECISION AND ORDER:

1. The Board obtained psychoeducational and psychosocial evaluations but not a neuropsychological evaluation.
2. The Board's psychoeducational and psychosocial evaluations were appropriate.
3. The Student is not entitled to an independent neuropsychological, psychoeducational or psychosocial evaluation at the Board's expense.