

March 6, 2018

Case No. 18-0262

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Enfield Board of Education v. Student

Appearing on behalf of the Parent:	Parent, pro se
Appearing on behalf of the Board:	Attorney Christine Chinni Chinni & Meuser One Constitution Plaza Hartford, CT 06103-1919
Appearing before:	Attorney Susan Dixon Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Whether the Enfield Board of Education's psychoeducational evaluation is appropriate or should a neuropsychological evaluation be ordered at public expense as the Parent has requested.

PROCEDURAL HISTORY:

The due process hearing request in this case was initiated by the Enfield Board of Education ("Board") on January 2, 2018 to determine the single issue above. This Impartial Hearing Officer was assigned to the case on January 3, 2018.

At the pre-hearing conference convened on January 11, 2018, the Student's mother ("the Parent") appeared on behalf of the Student and Attorney Christine Chinni appeared on behalf of the Board. During the conference, the Parent requested the scope of the hearing be expanded to address other issues and the Board objected. The Hearing Officer sustained the Board's objection. The Parent was aware that she is entitled to file a due process hearing request concerning other issues if she wishes to do so. During the conference, the initial deadline for filing the final decision in this case was established to be March 7, 2018. An evidentiary hearing date was scheduled for February 5, 2018.

The hearing convened on February 5, 2018, and concluded on that date. Following the conclusion of the hearing, both of the parties requested the opportunity to submit briefs, and both requested that the final decision date of March 7, 2018 be extended to accommodate the time for filing of said briefs. After consideration of all of the relevant factors, the request was granted as follows: the date for filing simultaneous briefs was ordered to be February 28, 2018; and the

deadline for the Final Decision and Order was set for March 26, 2018.

The following witnesses testified at the evidentiary hearing on February 5, 2018:

Elizabeth Plavcan, Ph. D.

Bridgette Birchall, M. S. Ed.

Hearing Officer Exhibits HO-1 and HO-2 were entered as full exhibits.

Board Exhibits B-1 through B-5 were entered as full exhibits.

Parent Exhibits P-1 through P-5 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *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 Board*, 835 F. Supp. 340 (S. D. Tex., 1993).

SUMMARY:

The 16-year old Student has been attending the CREC Magnet School - Academy of Aerospace and Engineering since sixth grade. He was diagnosed early in his life with Attention Deficit Hyperactivity Disorder and identified for special education services under the Other Health Impaired classification. The Student has had many prior evaluations in the course of his educational career. As a part of the Student's latest triennial evaluation, in November of 2017, a psychoeducational evaluation was to be conducted. The psychologist's evaluation was performed using an extensive battery of standardized tests, review of school records and interviews with Student, Parent and teachers. The evaluation was used by the Student's Planning and Placement Team ("PPT") to develop an Individualized Education Program ("IEP"). The Parent disagreed with the results of the evaluation and requested an Independent Educational Evaluation ("IEE") at public expense. The Board promptly initiated the request for due process within a short time thereafter and a hearing was convened. The Hearing Officer found the evaluation to be appropriate and sufficient and that the Parent was not entitled to an IEE at public expense.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, and in accordance with the Connecticut 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 of the evidence submitted by the parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Currently, Student is sixteen years of age (DOB 6/22/01) and is enrolled in the 11th Grade at the CREC Academy of Aerospace and Engineering Magnet School. (P-2, p. 2, P-4, p. 1)
2. The Student is identified as eligible for special education and related services under the Other Health Impaired classification with a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”). (B-1, p. 1, P-4, p. 1)
3. The Student has been identified as eligible for special education services since he began school, and has continuously received these services in every grade. (P-2, p. 3)
4. The Student had a psychiatric evaluation in kindergarten and was diagnosed with ADHD-Combined-Type and Pervasive Developmental Disorder NOS. (P-2, p. 3)
5. Throughout the Student's educational history he has had at least six (6) prior evaluations. (P-2, p. 4-6)
6. The Student had a neuropsychological evaluation at the end of the second grade, as well as another psychiatric evaluation, as a result of which he was diagnosed to have ADHD, Oppositional Defiant Disorder and Mild Anxiety Disorder. (P-2, p.4)
7. Neither of the evaluations in second grade showed evidence of autism spectrum disorder. (P-2, p. 4)
8. The Student had another neuropsychological evaluation at age ten. (P-2, p. 5)
9. The Student had a triennial evaluation in fifth grade and was again deemed eligible for special education services, transitioning to the Breakthrough Magnet School. (P-2, p. 5)
10. The Student transitioned to his present (magnet) school, CREC-Academy of Aerospace and Engineering, in sixth grade. (P-2, p. 5)
11. The Student had a second triennial evaluation in eighth grade, in November of 2014, and the PPT determined the Student remained eligible for special education services. (P-1, p. 2)
12. The Student had moved to Enfield, Connecticut from Farmington, Connecticut just prior to the eighth grade evaluation. (P-1, p. 2)
13. The Student maintained an “A” average at the magnet school in eighth grade and services were continued for ninth and tenth grade with minimal alterations and/or concerns. (P-2, p. 6)
14. For 11th Grade, the Student continued to receive the services in a variety of areas that were implemented over prior school years, per his IEP, including, but not limited to, providing the following items: access to a computer and calculator; extended time to complete all tests and quizzes as needed and for completion of written work; academic support in writing with no handwriting penalty, pre-writing opportunities and “chunking” long-term assignments into smaller parts; assistance in organization with the use of an assignment pad and graphic organizer; preferential seating away from distractions and to reduce auditory and visual stimulation; behavioral intervention with positive reinforcement and immediate feedback with checking work in progress, sensory breaks and chewing gum/hard candy, weekly list of class assignments and activities for the week; as well as group social work services, and occupational therapy. (P-2, p. 2, 5)

15. The Student continues to perform well in school, earning all “A”s in all classes and mastering goals set by the social worker. (P-2, p. 6)
16. The Parent reports ongoing concerns for several years about the Student's anxiety and emotional difficulties at home, but admits the school does not report similar concerns. (P-2, p. 6)
17. The Parent obtained a psychiatric evaluation of the Student in tenth grade due to these and additional concerns that he was irritable, anxious, and worried about his relationship with his peers and schoolwork. A diagnosis of Autism Spectrum Disorder, level 1 and Adjustment Disorder with Anxious Features was reported. (P-2, p. 6)
18. At a PPT meeting thereafter, the team discussed the difference between autism as an eligibility category under IDEA and a clinical diagnosis of autism, and, by reviewing the diagnostic checklist, that the Student did not meet the criteria for “educational” autism. (P-2, p. 6, 23)
19. The Student was scheduled for a triennial evaluation in 2017 to determine his continued eligibility for Special Education services. (P-2, p. 2)
20. The triennial evaluation took place in November of 2017. (P-2, p. 1)
21. The Student was examined and tested by Elizabeth Plavcan, Ph.D., the school psychologist, on November 13 and 17, 2017, as a part of the triennial evaluation. (P-2)
22. Dr. Plavcan has been the Enfield school psychologist for thirty (30) years, receiving a doctorate from University of Connecticut in 2004, and has performed 1500 to 1600 evaluations during her career in Enfield. (Testimony, Plavcan)
23. Dr. Plavcan's psychoeducational evaluation of the Student included administration of the following assessments:
 - a. Weschler Adult Intelligence Scale - 4th Ed. (WAIS-IV)
 - b. Behavioral Rating Inventory of Executive Function – 2nd. Ed. (BRIEF-2)
 - c. Woodcock- Johnson Tests of Achievement - 4th Ed. Form A (WJ-IV-A)
 - d. Conners Behavior Rating Scale - 3rd Ed. (CBRS-III)
 - e. Autism Spectrum Rating Scales (ASRS)
 - f. Social Responsiveness Scale, 2nd. Ed. (SRS-2)
 - g. Behavioral Assessment System for Children - 3rd Ed. (Self-Report) (BASC)(T., Plavcan)
24. The Parent was aware of Dr. Plavcan's choice of tests in advance but did not request additional or different tests. (T., Plavcan)
25. The Parent disagrees with some of the conclusions and interpretations of the testing by Dr. Plavcan, (B-2, p. 18)
26. The Parent disagrees with the number of tests utilized in the evaluation but was informed of the number (and type) of tests in advance by Dr. Plavcan. (T. Plavcan).
27. The Parent questioned why Dr. Plavcan did not observe the Student in the classroom but Dr. Plavcan explained that classroom observation is not essential to a valid evaluation. (Cross-examination of Dr, Plavcan)
28. The Parent questioned Dr. Plavcan's observation that IQ scores can vary (drop) from year to year but that is not necessarily indicative of a problem. (Cross-examination of Dr. Plavcan)
29. Dr. Plavcan did not make a finding that the Student was a Student with autism, based on the ASRS and SRS-2 testing. In her response to the questions for the parent in this test, the Parent reported various difficulties in Student's personal interactions, and that he

shows little emotion, over-reacts to noises, and engages in repetitive behaviors. For these reasons, Parent disagrees with Dr. Plavcan and believes additional testing is warranted. (T., Plavcan, B-2, p. 8, P-2, p. 19)

30. The WJ-IV is a standard achievement test that Dr. Plavcan testified can be affected if a Student has ADHD, but she saw no evidence of any impact of that on Student's scores. (T. Plavcan, B-2 p. 1)
31. The results of the WJ-IV showed the Student to be in the "average" range. (T. Plavcan, B-2, p. 10)
32. In her report, Dr. Plavcan stated that the results of the WAIS-IV placed the Student within the "average" range of cognitive ability. (T., Plavcan, B-2, p. 7, 9-10)
33. One other concern the Parent raised was a difference of the IQ (and component) scores between a previously-administered WISC test (in Grade 5) and the current WAIS score, but Dr. Plavcan attributed this discrepancy to the WAIS test having recently been "re-normed" so an exact comparison was inaccurate. (T. Plavcan)
34. As a component of the WAIS-IV, the evaluator observes the Student's behavior and engages him in conversation. Dr. Plavcan noted: "Student presented himself as a reserved, but friendly student. He engaged in casual, reciprocal conversation with the examiner. He was able to adopt a test-taking attitude and appeared to put forth his best effort throughout the testing even when presented with challenging items. The present evaluation should be considered a valid estimate of his current functioning level." (P-2, p. 9)
35. Dr. Plavcan testified that the WJ-IV test, a well-established indicator of reading and math skills, provides insight into the impact, if any, of the Student's ADHD on his performance in the reading and math components of the test. (T., Plavcan)
36. Dr. Plavcan testified that the Student fell within the "average to high" scores in the WJ-IV. (T., Plavcan, B-2 p. 10)
37. Although Dr. Plavcan did not observe the Student in the classroom, she spoke to his teachers who provided detailed reports of his classroom work and behavior, which informed her analysis of the Student's performance on the CBRS-III. (T., Plavcan)
38. The results of the CBRS-III, according to Dr. Plavcan, did not reveal significant concerns. (T., Plavcan)
39. Dr. Plavcan also utilized the BRIEF-2 test (a rating scale that assesses everyday behavior associated with executive functioning) which did not indicate problems in the area of executive functioning. (T., Plavcan)
40. On the BRIEF-2, the Parent reported "Elevated to Very Elevated Concerns" scores when compared to the three Teachers used in the test, and to the Student himself. (P. 2, p. 15)
41. Dr. Plavcan also administered the BASC which requests the Student to self-evaluate and he reported average concerns and issues. (T., Plavcan)
42. Dr. Plavcan reviewed the Student's Special Education and other records, including all previous IEPs, previous evaluations and entire academic record in completing her evaluation. (T., Plavcan)
43. Dr. Plavcan selected the evaluation methodology based on her experience and training and
44. Dr. Plavcan did speak with the Student and the Parent at length about the tests, the Student's needs, diagnoses and his academic and emotional functioning. (T., Plavcan)
45. The Parent claims the evaluation was insufficient because Dr. Plavcan did not observe the Student in the classroom. (Cross-examination, Dr. Plavcan)

46. Dr. Plavcan's report of the testing was discussed at two scheduled PPT meetings on December 4 and 21, 2017, where the Parent was present. (T., Plavcan, P-4, p. 1, T., Birchall)
47. At the PPT meeting on December 4, 2017, the "Parent requested and (*sic*) IEE; a neuropsychological evaluation with and (*sic*) ADOS to address autism, attention, anxiety, writing and executive functioning" which was refused by the District. (P-4, p. 2)
48. The Student's IEPs have included certain modifications and accommodations to address his needs and circumstances. (P-2, p. 2)
49. The Student's teachers reported no areas of academic or other concern to Dr. Plavcan. (T., Plavcan)
50. Dr. Plavcan described the Student's many strengths; willingness to learn, excellent academic performance, as well as some areas to be addressed, such as learning to control behavior, and anxiety issues which will continue to be addressed within the IEP, with social work services and academic support. (T., Plavcan, B-3, 5, P-2, p. 6)

CONCLUSIONS OF LAW AND DISCUSSION:

The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 C.F.R. §300.521. R.C.S.A. 10-76h-14(a) The purpose of an evaluation is to determine if the student is a child with a disability under 34 C. F. R. §300.8 and eligible for special education, and to determine the educational needs of the child. 34 C.F.R. §300.301(c)(2)

A child is determined to be (or remain) eligible for such special education after an "appropriate" evaluation, i.e. one that complies with the federal and state regulations to produce enough information to determine whether the student is (or remains) eligible to receive special education services and to develop an individualized education program for the student. 34 C.F.R. §300.301-300.305, R.C.S.A. Sec. 10-76d-9(a) and (b)

In determining whether or not a Board evaluation is appropriate, the focus is on whether the evaluation: (1) Used a variety of essential tools; (2) was administered by trained, knowledgeable, and qualified personnel; (3) was administered and conducted under standard conditions and in accordance with instructions provided by the producer of the assessments; (4) incorporated information from various sources such as classroom observations and review of existing data; and (5) whether the independent evaluation would provide any new or additional information. 34 C.F.R. §300.304(c), 300.305 See, *Westport Board of Ed. v. Student, Final Decision and Order 11-0355 (Conn. 2011)*, *Warren G. v. Cumberland County School District, 190 F.3d 80, 87 (3rd Cir. 1999)*, *S. Kingstown Sch. Comm. v. Joanna S., 773 F.3d 344 (1st Cir. 2014)*, *Doe v. Cape Elizabeth School District, 832 F.3d 69 (1st Cir. 2016)*

If a student receives an evaluation by the district with which the parent disagrees, a parent has the right to an IEE at public expense, unless the district demonstrates at a due process hearing that its own evaluation of the child was appropriate, or the district demonstrates in a due process hearing that the evaluation obtained by the parents did not meet district criteria. 34 C.F.R. §300.502(b)(1), (2), R. C.S.A. 10-76d-9(c)(1), (2)

If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure either an IEE is provided at public expense, or initiate an impartial hearing to show that the evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria. 34 C.F.R. §300.502, R.C.S.A. 10-76d-9(c)(2).

Parent informed the Board that she disagreed with the Board's evaluation at the PPT meeting on December 4, 2017, and the Board timely filed this due process request on January 2, 2018 to determine whether its evaluation was appropriate and meets the stated purpose of 34 C.F.R. §300.301-300.305.

The Board's evaluation was conducted under the requirements of 300.304(c); to wit,

- (1) 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.
- (2) 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.
- (3) 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).
- (4) 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.
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 34 C. F. R. § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
- (6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and needs, whether or not commonly linked to the disability category in which the child has been classified.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

The evaluator was a highly trained and experienced school psychologist who was familiar with the student's disability and educational history, and familiar with necessary tests used in evaluations. (T., Plavcan, R.C.S.A §10-76d-9, 34 C.F.R. §300.304(c), 34 C.F.R. §300.502(b)(2)(ii))

The Board's evaluation was appropriate and meets the stated purpose of 34 C.F.R. §300.301-300.305.

It is found by a preponderance of the evidence that Dr. Plavcan's evaluation met the standard of appropriateness, in that: 1) she was qualified to conduct an evaluation of the Student; 2) she administered a comprehensive battery of essential tests to the Student under appropriate conditions; and 3) reviewed the extensive records comprising the Student's educational and psychological background, in addition to interviewing the Student, the Student's parent and teachers; 4) and used the information to make recommendations as to the Student's performance.

The Parent did not call any witnesses at the hearing, or offer sufficient other evidence to support her claim that the Board's evaluation was inadequate or failed to meet the compliance standards set forth in 34 C.F.R. §300.301-305 and R.C.S.A. §10-7d-9(a) and (b).¹

FINAL DECISION AND ORDER:

1. The Board's evaluation is sufficient to develop the Student's Individualized Education Program and to provide a Free and Appropriate Public Education to the Student.
2. Parent is not entitled to an Independent Educational Evaluation at public expense.

¹The Parent offered an exhibit (P-5) consisting of a report by Laura Seese, Ph. D. dated 1/21/18 (after the school's evaluation and IEP were prepared); however, Dr. Seese was not called as a witness at the evidentiary hearing. Notwithstanding Dr. Seese's absence at the hearing, Dr. Plavcan testified she was aware of, reviewed, and directly addressed the document's contents. T. Plavcan, 34 C.F.R. §300.502(c)(2)