

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

North Branford Board of Education v. Student

Appearing on behalf of the Board:

Attorney Marsha Moses  
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Milford, CT 06460

Appearing on behalf of the Student:

Attorney Jennifer Celentano  
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Appearing before:

Attorney Jane Ford Shaw  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the Psychological evaluation appropriate?
2. Is the Psychosocial evaluation appropriate?
3. Is the triennial education evaluation appropriate?
4. Is the triennial pragmatic language evaluation appropriate?
5. Is the Psychiatric evaluation appropriate?
6. If the answer to 1-5 is no, are the Parents entitle to an independent educational, psychological, psychosocial, educational, speech and language and/or psychiatric evaluation at public expense?

**PROCEDURAL HISTORY:**

The Board initiated this special education due process case on July 11, 2019 pursuant to 34 C.F.R. § 300.502(b)(2)(i) . This Impartial Hearing Officer was assigned to the case on July 11, 2019. A Prehearing Conference was convened on August 5, 2019. Attorney Jennifer Celentano appeared on behalf of the Student and Attorney Marsha Moses appeared on behalf of the Board of Education. Evidentiary hearings were scheduled for September 9, 2017 and September 23, 2019. On September 3, 2019 the Counsel for Parents filed a Motion captioned “Complaint/Cross Complaint” which was denied by this Hearing Officer on September 4, 2019<sup>1</sup>.

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<sup>1</sup> While a cross complaint is not procedurally an available motion given the fact there are no additional defendants, Counsel for the student was advised that if she seeks to bring a complaint on separate grounds, one can be filed pursuant to R.C.S.A. Section 10-76h-3(e).

Evidentiary hearings were conducted on September 9, 2019 and September 23, 2019. At the September 9, 2019 Hearing, Counsel for the Student appeared without her clients and the hearing did not go forward. Thereafter, Counsel for the Parents filed a Motion to Recuse the Hearing Officer. The Board filed an objection and the Parent's Motion to Recuse was denied. A third evidentiary hearing was scheduled for September 23, 2019. At the conclusion of the Father's testimony, Counsel for the Parents withdrew their request for psychological, educational and pragmatic language independent educational evaluations with prejudice. As a result, Issue (1), Issue (3) and Issue (4) were withdrawn with prejudice.

At the conclusion of the evidence presented at the September 23, 2019 hearing, the Board rested its case. An order for a briefing schedule was entered where simultaneous briefs were to be filed on October 18, 2019. Upon oral motion by counsel, the mailing date of the final decision was extended to November 18, 2019.

The following witnesses testified:

Danielle Johnson, MA, LCSW School Social Worker;  
Dorothy Stubbe, M.D. , Associate Professor of Child and Adolescent Psychiatry at Yale University School of Medicine Child Study Center; and  
Father

Hearing Officer Exhibits HO-1 through HO 7 were entered as full exhibits. Board Exhibits B-1 through B-39 were entered as full exhibits.

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

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. *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

### **SUMMARY:**

The Board has filed this request for due process pursuant to 34 C.F.R. 300.502(b)(i) to show that the Board's psychosocial and psychiatric evaluations are appropriate. The Parents disagree with the Board's psychosocial and psychiatric evaluations and have requested independent education evaluations at public expense pursuant to 34 C.F.R. 300.502(b)(1).

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

### **FINDINGS OF FACT:**

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

1. Currently, Student is thirteen years of (07/15/2006) age and is enrolled in the seventh grade at North Branford Intermediate School.
2. The Student is identified as eligible for special education and related services under the Other Health Impairment classification with a diagnosis of Attention Deficit Disorder/Attention Disorder Hyperactive Disorder (“ADHD”). (B-7).
3. The Student receives 6.81 hours a week of special education services including small group/individual academic support, inclusion Math and Language Arts instruction and Social work 4.17 hours yearly and speech/language (12.50 hours yearly). support. (B-32).
4. At the September 7, 2018 planning and placement team (“PPT”) meeting, the team, including the Parents, agreed to a triennial reevaluation consisting of academic achievement tests and a classroom observation; autism, behavioral and adaptive rating scales; individually administered tests of pragmatic language; and updated medical information form. (B-13, T. Father).
5. The Parent signed consent for psychosocial assessment as part of the Student’s triennial re-evaluation. (B-14, T. Father).
6. The Board’s school social worker, Danielle Johnson, LCSW, conducted a triennial psychosocial assessment and wrote a report dated March 7, 2019. (B-26).
7. Ms. Johnson is an experienced Licensed Clinical Social Worker (LCSW), who prior to her employment with the Board, has worked in both residential and day treatment programs for children at risk, providing group, individual and family therapy as well has conducting assessments. (T. Johnson).
8. As a school social worker, she has completed an estimate of 400 psychosocial assessments. (T. Johnson).
9. Ms. Johnson has received professional development training in the administering of the most current Behavioral Assessment System for Children assessment (“BASC-3”). (T. Johnson). The BASC-3 assessment is a multi-dimensional approach to evaluating the behavior and self-perceptions of children. The report generates data for consideration concerning a child’s behavioral profile and “also identify areas that are viewed as problematic by parents, teachers and/or the student themselves.” (B-26, p.1).
10. Ms. Johnson has worked with the Student since the beginning of the 2018-19 school year; originally, providing counselling support when needed and as part of a social skills group which met once a week for a class period. (T. Johnson).

11. At the September 7, 2018 PPT meeting with the Parents present, Ms. Johnson recommended the BASC-3 evaluation be performed in connection with the Student's triennial. She made this recommendation with the Parents' concerns in mind. (T. Johnson).
12. The Parents provided written consent for the psychosocial evaluation as recommended by the PPT on September 7, 2018. (B.14).
13. As part of the BASC-3 assessment, Ms. Johnson distributed Rating Scales to Parent, Teachers, and the Student, observed the Student in the classroom, in the cafeteria, met with the Student 1:1, and reviewed educational records and past evaluations. (T. Johnson). (B-26). The Mother was the only parent who completed a Rating Scale. (T. Johnson).
14. The assessment was administered in the Student's native language and was chosen to avoid discrimination on racial and cultural grounds. (T. Johnson).
15. Rating Scales completed by the History teacher resulted in an "at risk" score in the area of withdrawal. (T. Johnson).
16. Rating Scales completed by the Language Arts and Math teachers noted concerns in areas of social skills, leadership and functional communication. (T. Johnson).
17. Rating Scales completed by the Student noted concerns in the area of locus of control and a sense of inadequacy. (T. Johnson).
18. Rating Scales completed by parent reported clinically significant concerns in the areas of anxiety, hyperactivity behavior, difficulty controlling himself, impulse control and noted some aggressive behaviors. (T. Johnson, B-26).
19. The BASC-3 evaluation's F Index<sup>2</sup> of the Mother's response to the Rating Scales was "elevated" which indicates a "tendency to be excessively negative about child's behaviors, self-perceptions, or emotions." (B-26).
20. Given a concern regarding the Student's eating habits expressed by the Parents, Ms. Johnson observed the Student in the cafeteria. (T. Johnson). Ms. Johnson observed the Student eating, interacting with his peers and acting appropriately.
21. Ms. Johnson also reviewed the Student's school records including prior assessments and his historical academic performance. (T. Johnson).

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<sup>2</sup> The F index "is scored by counting the number of times the respondent answered *Almost Always* to the description of negative behavior or *Never* to a description of positive behavior." (B.26, P. 6).

22. Ms. Johnson concluded that the Student was displaying age appropriate behavior at school, complying with school expectations but noted that the concern that this was not happening at home. (T. Johnson). As a result of this concern, Ms. Johnson made recommendations for family counselling. (T. Johnson, B-26).
23. Ms. Johnson presented the results of the psychosocial assessment at the March 7, 2019 PPT meeting. (T. Johnson, B-26, B-29). As a result of her assessment. Ms. Johnson recommended that the results of the triennial assessments be “shared with any community provider (ex. Pediatrician, therapist, etc.) in order to give them a clearer understanding of the Student’s functioning in the school environment;” and that the Student and the family “should continue to participate in family counseling to address the concerns they have with [the Student] in regards to the behaviors he displays at home.” (B-26).
24. The assessment was used as part of the development of the Student’s March 7, 2019 IEP. (T. Johnson).
25. The Parents did not express any disagreement with the evaluation at the March 7, 2019 PPT meeting. (T. Johnson).
26. At a January 4, 2019 PPT meeting the Parents provided written consent for a psychiatric evaluation recommended by the PPT. (B-19; B-20; T. Father).
27. The Board engaged Dr. Dorothy Stubbe to conduct the psychiatric evaluation who prepared a written report dated March 7, 2019. (B-27).
28. Dr. Dorothy Stubbe is a licensed psychiatrist and the Associate Professor of Child and Adolescent Psychiatry, Director of Residency Training, Yale University of Child Study Center. (T. Stubbe, B-37).
29. Dr. Stubbe is a highly experienced practitioner who has extensive experience as a child and adolescent psychiatrist. (T. Stubbe). In addition to providing psychiatric assessments for schools, Dr. Stubbe also performs assessments for pediatricians, as well as diagnostic psychiatric assessments for families along with treatment recommendations. (T. Stubbe).
30. Dr. Stubbe also has experience diagnosing individuals with anxiety disorders, feeding and eating disorders, mood disorders, depression, anxiety, obsessive compulsive disorders, oppositional defiant disorder, attention deficit disorder pursuant to DSM-5. (T. Stubbe). She has extensive experience providing evaluations for public schools. (T. Stubbe).
31. The standard psychiatric evaluation involves a clinical interview including aspects of history, medical history, developmental history, psychiatric and treatment history, looking at mental status of the child, interview the child and parents. (T. Stubbe).
32. The evaluation conducted by Dr. Stubbe was for educational purposes.

33. Dr. Stubbe conducted a psychiatric evaluation of the Student. As part of the evaluation, Dr. Stubbe met with school personnel including the school social worker and the special education teacher and met with the Parents and the Student. (T. Stubbe, B-25).
34. Dr. Stubbe met with the Parents at their home. (T. Stubbe). Parents shared with Dr. Stubbe their concern that the Student acted out frequently at home. (T. Stubbe). Parents shared their frustration that the school personnel were not observing the same behaviors the Student were demonstrating at home. Parents shared with Dr. Stubbe their concern that the school personnel may be minimizing the Student's behaviors but that such behaviors were disruptive to the family many ways. (T. Stubbe). Parents also shared concerns regarding the Student's safety and acts of aggression, including incidents in both the community and home. (T. Stubbe).
35. As part of the psychiatric evaluation, Dr. Stubbe spoke to the private therapist who has treated the Student for several years. (T. Stubbe). She also completed a record review which included reviewing the most current IEP, psychological testing conducted in 2016 (B-7), correspondence from the Student's pediatrician, which provided a medical diagnosis. (B-16).
36. Dr. Stubbe also met with the Student for approximately one hour. (T. Stubbe).
37. Dr. Stubbe diagnosed the Student with the Autism Spectrum Disorder, Level 1, Attention Deficit Hyperactivity Disorder and Possible Mood Disorder, Unspecified. (T. Stubbe, B-27).
38. Dr. Stubbe considered the diagnostic criteria for Bipolar Disorder, Reactive Attachment Disorder and Depression and concluded that the Student did not meet these diagnostic criteria. (T. Stubbe).
39. Dr. Stubbe acknowledged the Parents' concerns by making non-educational recommendations in her report to address them. (B-27).
40. Dr. Stubbe's report included both educational and non-educational recommendations. Her educational recommendations provided:
  1. The current special education exceptionality seems appropriate – Other Health Impairment – ADD/ADHD, which results in poor focus, inconsistent effort, and academic and social underachievement.
  2. Counseling – small group and/or individual counseling weekly is recommended to assist Student in gaining skills to identify and express his feelings adaptively. Relaxation and self-calming methods may be helpful. In addition, activities that assist him in reading social cues more appropriately, (including how to read social cues and to ask if he does not understand) and to inhibit inappropriate behaviors may be helpful.
  3. Interventions aimed at targeting ADHD symptoms will be beneficial. This includes preferential seating, organization skills building, refocusing, and quiet area and area and extra time for testing when indicated.

4. Interventions for ASD – to include an assessment of possible use of sensory tools. Student may use social stories for any changes in schedule, and coaching around appropriate social behavior.

5. Student demonstrates low self-esteem. Student may benefit from activities that highlight areas of strength – such as athletics, drawing and being a helper. Close collaboration among Student, his parents, the school team, his mental health providers and pediatrician will be vital to ensuring all are on the same page in support Student's needs. (B-27).

41. In addition, Dr. Stubbe recommended non-educational recommendations:

1. Student will benefit from behavioral interventions in the home (ABA, etc.) to assist him with gaining adaptive behavioral skills.
2. Student may benefit from services for ASD, such as social skills group in the community. The Yale Child Study Center has a social time for children on the spectrum.
3. The Student has demonstrated a sensitivity to medication. He may benefit from pharmacogenetic testing to ascertain how he metabolizes the medications and which may be most tolerated/helpful for him.
4. The family is encouraged to consider another medication trial for ADHD. His inattention is interfering with his ability to process information (academic, social, etc). The pharmacogenomics may assist in choosing an appropriate medication.
5. Student may benefit from an organized, structured, extracurricular activity of his choosing – a sport, martial arts, art group, or other activity or interest.
6. An intensive outpatient program, parent management training and other interventions, in addition to individual therapy, may be considered to assist the family in helping the Student gain more adaptive coping skills. (B-27).

42. The Father was the only parent to attend the hearings in this matter. The Father was unable to remain for Dr. Stubbe's testimony and knowingly and willingly waived his right to be present during her testimony. (T. Father).

43. Three months after the assessments conducted as part of the triennial were presented to the PPT, a PPT meeting was held on June 7, 2019 at the Parents' request. (B-25). During this PPT meeting, the Parents expressed their serious concerns regarding the appropriateness of the Student's programming in light of his disability, their safety concerns regarding the incidents when the Student left school on the wrong bus, and their concerns regarding the Student's academic progress, and social development. (T. Father).

44. The Parents advised the June 7, 2019 PPT that the Student "needs more services." (T. Father) The Parents requested a publicly funded Independent Educational Evaluation (IEE). The Parents proposed that if an IEE shows that the Student's programming was appropriate, the Student would remain in his placement but if an IEE shows the Student needs a different program, they would expect the PPT would follow the recommendation. (T. Father) The PPT denied the Parents' request for an IEE. (B-32).

45. The Parents also notified the District that they disagreed with all of the triennial evaluations previously presented at the March 7, 2019 PPT. (B-33, T. Father).
46. The Board sent correspondence to Parents on June 21, 2019 requesting the Parents identify which evaluations completed as part of the March 2019 triennial review that they disagreed with and advised the Parents that the Board was denying any request for an IEE. (B-33).
47. The Father disagrees with the psychiatric assessment. He does not feel the psychiatric evaluation completed by Dr. Stubbe was “thorough enough.” (T. Father). He feels that “there should have been additional testing for reactive attachment disorder, more investigation of bipolarity, manic depressive state” (T. Father) and stated that the parents “have disagreements holistically in the overall assessments.” (T. Father).
48. The Student exhibits aggressive and defiant behaviors at home which differ from what the Board’s personnel report observing at School. (T. Father). The Parents continue to be concerned about the Student’s safety and social development. (T. Father). The Student has had incidents of displaying aggression towards other students during the 2018-19 school year (threatened to stab another student) (T. Father) and towards his sister at home. (T. Father) and has gotten on the wrong bus home from school several times despite assurances from Board’s personnel that it would not happen again. On one occasion, the Student got into the car of a stranger/good Samaritan. (Id.)
49. The Board’s psychosocial assessment and psychiatric assessment both took into consideration the Parents’ position that the Student exhibits behaviors at home which are not being observed in the school setting. Both assessments made recommendations which contemplated these concerns. (B-26, B-2).
50. The Parents have acted upon the non-educational recommendations on part of Dr. Stubbe. (T. Father).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. 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 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).
2. A school district must reevaluate a student who receives special education services at least once every three years. This triennial reevaluation’s purpose is to evaluate a student’s relevant function, developmental and academic skills to determine whether



the student continues to be eligible for special education services and to provide any necessary updates to the student's IEP. 20 U.S.C. §1414(a)(2)(B)(ii); 34 C.F.R. §300.305(a)(2)(1)(B)(iv), R.C.S.A. § 10-76d-9. A particular eligibility classification is immaterial to providing a free and appropriate public education so long as the IEP is tailored to the unique needs of the student. 20 U.S.C. §1414(a)(2)(B)(ii); 34 C.F.R. §300.305(a)(2)(1)(B)(iv), R.C.S.A. §10-756d-9; *Fort Osage R-1 School District v. Sims*, 56 IDELR 282 (8<sup>th</sup> Cir. 2011); see also *Torda v. Fairfax County School Board*, 61 IDELR 4 (4<sup>th</sup> Cir 2013, unpublished), cert denied, (U.S. 03/24/14)(No. 13-6908).

3. 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 existing data; and (5) whether the independent evaluation would provide any new or additional information. 34 C.F.R. § 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 (3<sup>rd</sup> Cir. 1999), *S. Kingstown Sch. Comm. v. Joanna S.*, 773 F.3d 344 (1<sup>st</sup> Cir. 2014), *Doe v. Cape Elizabeth School District*, 832 F.3d 69 (1<sup>st</sup> Cir. 2016).
4. The tools used must be nondiscriminatory on a racial or cultural basis and be administered in a language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally and be geared to provide relevant information to assist in determining the educational needs of the child. 20 U.S.C. §14114(a)(2)(B)(ii), (3)(A)(i-ii); 34 C.F.R. §304; R.C.S.A. §10-76d-9(a). The evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent.
5. No single measure or assessment may be used as the sole criteria for determining eligibility for special education services and for determining the appropriate program. Evaluators must be trained and knowledgeable and appropriately certified and/or licensed to administer assessments and measures and administer the assessment in accordance with the test producer's instructions. 34 C.F.R. §300.304(b)(3). "Technically sound instruments generally refer to assessments that have been shown through research to be valid and reliable." 34 C.F.R. §300.304(b)(2).
6. The chosen assessments must be tailored to assess specific areas of educational need of the child and not merely those that are designed to provide a single general intelligence quotient. See 34 C.F.R. §300.304(b)(2).
7. Assessments must be selected and administered so as to best 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). 34 C.F.R. §300.304(c)(3).

8. The child should be 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. 34 C.F.R. §300.304(4).
9. If a student receives an evaluation with which the parent disagrees, the parent is a right to an independent educational evaluation at public expense, which means at no cost to the parent. 34 C.F.R. § 300.502, R.C.S.A. §10-76d-9(c)(1) and (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 its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria.
10. If the impartial hearing officer finds that a school district's evaluation is appropriate, a parent may not obtain an IEE at public expense. 34 C.F.R. §300.502; R.C.S.A. §10-76d-9(a).
11. It is found by preponderance of the evidence that Psychosocial evaluation conducted by the Board's social worker, Ms. Johnson, LCSW meets 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; 3.) reviewed the extensive records comprising the Student's educational and psychological background, in addition to interviewing the Student, the Student's Parents and teachers; and 4.) used the information to make recommendations as the Student's performance.
12. It is found by preponderance of the evidence that Psychiatric evaluation dated March 7, 2019 and conducted by Dr. Stubbe at the Board's request meets 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; 3.) reviewed the extensive records comprising the Student's educational and psychological background, in addition to interviewing the Student, the Student's Parents and teachers; and 4.) used the information to make recommendations as the Student's performance.

### **FINAL DECISION AND ORDER:**

The Board's psychosocial evaluation dated March 7, 2019 is appropriate. The Board's psychiatric evaluation dated March 7, 2019 is appropriate. The Student is not entitled to a publicly funded Independent Educational Evaluation.