

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Greenwich Board of Education v. Student

Appearing on behalf of the Parents:

*Pro Se*

Appearing on behalf of the Board:

Abby Wadler, Esq.  
Assistant Town Attorney  
Greenwich Town Hall- Law Department  
101 Field Point Road  
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Appearing before:

Sylvia Ho, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Were the Board’s evaluations appropriate?
2. If not, should the Board be required to provide independent educational evaluations at public expense?

**PROCEDURAL HISTORY:**

The Board filed the Due Process Complaint/Hearing Request on December 14, 2020. A Prehearing Conference was conducted on January 6, 2021. The hearing was held on February 3, 2021, February 26, 2021, March 5, 2021 and March 25, 2021. The Board’s requests to extend the timelines was granted and the Mailing Date of the Final Decision was extended to May 6, 2021

The hearing convened on March 25, 2021. The Board presented the testimony of witnesses. They were Eugene Matajek, Assistant Principal; John Castiglia, School Psychologist; Marlene Fernandez, Special Education Teacher, Theresa McElroy, Speech and Language Therapist and Emily Belmonte-Interlandi, Occupational Therapist. The Board submitted as full exhibits B-1 through B-22. The Board’s Due Process Complaint/Hearing Request was admitted as B-1 and HO-1. The Parents did not submit exhibits. The Parents called Mother and two Board employees as witnesses. They were Susan Keating, Special Education Teacher and Frederic M. Stewart, Classroom Teacher. The two witnesses’ curriculum vitae were admitted as B-26 and B-27. The Board’s original exhibits did not contain the previous Educational Evaluation that was being updated by the Triennial Evaluation in dispute. The Hearing Officer requested that the Board provide these as exhibits. These evaluations were entered as Exhibit B-24 and B-25. The Individual Education Plan (“IEP”) from which the Planning and Placement Team

meeting (“PPT”) at which the Student was found eligible for Special Education was entered as Exhibit B-23.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony 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 facts actually represent conclusions of law, they should so be 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. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

### **SUMMARY:**

The Board filed a Due Process Complaint to defend its Triennial Evaluations of a fifth grader who qualified under the category of Learning Disability/Dyslexia. Based upon the evaluations, the Student was determined not to be eligible Special Education and Related Services under the IDEA. Instead, the school team determined that the Student was eligible as a Student with a Disability under Section 504 of the Rehabilitation Act of 1973. The Mother disagreed and requested an Independent Educational Evaluation.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §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, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on May 17, 2009 and is currently a 6<sup>th</sup> grade General Education student at Eastern Middle School at the time of this decision.
2. The academic record shows that in March of 2017 when Student was 7 years old and a second grader, the Board identified Student as being eligible to receive Special Education and Related Services under the category Learning Disability/Dyslexia. (B-24, B-2)
3. The initial evaluation included the administration of the Woodcock Johnson Tests of Cognitive Abilities 4th ed., Conners CBRS, Behavior Rating Inventory of Executive Function, 2<sup>nd</sup> ed., Kaufman Test of Educational Achievement, 3<sup>rd</sup> ed. (KTEA-3), Wechsler Individual Achievement Test 3<sup>rd</sup> ed., Phonological Awareness Test 2, Rapid Automatized Naming and Rapid Alternating Stimulus Test (RAN/RAS), a Clinical Interview, a Record Review, Behavioral and Classroom Observations. (B-24, B-25)
4. The Student’s General Intellectual Ability (GIA) was determined to be Average. Student scored in the Average range in subtests for Phonological Processing, Story Recall, Cognitive Processing Speed and Pair Cancellation. Student scored in the Low Average

range in subtests for the Perceptual Speed, Letter-Pattern Matching and Number Pattern Matching. On the Educational Evaluation, Student had no problems with decoding and scored in the High Average range. Despite having phonological skills, Student struggled with her ability to retrieve individual and clusters of symbols with speed and automaticity. The evaluator observed that “[t]o be a fluent reader, one must rapidly identify visual patterns and attach these patterns effortlessly; so that most of the processing of information of a sentence or passage is not relegated to these lower-level skills. ..[the Student] has not achieved automaticity with grade level text. . .*her slower retrieval rate* is a factor that interferes with blending and automaticity.” (emphasis supplied) (B-24)

5. The Triennial Evaluation was proposed at a February 7, 2019 PPT and the Mother signed consent to assessments in the area of cognition, social, emotional, behavioral functioning and academic functioning. A new IEP was also presented during the PPT. (B-16)
6. As of February of 2019, the IEP indicated that the Student was not age appropriate in Language Arts. The “Concerns/Challenges” section states, “When responding to comprehension questions about what she is reading or listening too (sic), [Student] sometimes has difficulty answering robustly. She needs encouragement and support to elaborate. She benefits from support when describing the main idea of a passage and citing evidence to support her ideas in an organized response. When presenting information about a topic she has researched, [Student] struggles to organize the material and her ideas. She benefits from support in planning, drafting and editing all her work for clarity.” The Impact of Student’s Disability section states, “[Student’s] disability impacts her ability to express her ideas and present information in written form.” In other areas, the Student appeared to be meeting grade level expectations. The record reflects that the “Concerns/Challenges” section did not change from the February 2019 to the time of the Triennial evaluation. (B-14, B-15, B-16)
7. At an October 24, 2019 PPT, a few months before the Triennial Evaluation, the Mother brought the Student’s recent diagnosis of Ehlers-Danos Syndrome, a genetic disorder, to the School Team’s attention. A healthcare plan was drafted, and the IEP was revised to include accommodations for the Student’s diagnosis. The record does not show whether a doctor’s letter was provided nor whether the Student’s physician was contacted by the School Team nor whether the diagnosis was considered in relation to the Student’s academic programming. (B-15)
8. At this PPT, the Mother also expressed concerns that Student was having difficulty with math fluencies. The School Team indicated that they would address the Student’s math performance and report on the math issues at the end of the year. There is a lack of evidence that these math issues were ever addressed at the PPT meeting thereafter. (B-15)
9. On December 18, 2019, the Mother contacted the school to request an Occupational Therapy evaluation as part of the Triennial Evaluation. She also raised concerns about the Student’s anxiety and problems with lack of organization as possible by-products of the Student’s diagnosed disability of Ehlers-Danos Syndrome. The record also reflects that the school staff reported the Parents to the Connecticut Department of Children and Families (“DCF”) attributed the Student’s recent behaviors to parental neglect. The case was dismissed. The PPT did not consider the impact of the Ehlers-Danos Syndrome diagnosis on the Student educational access. The record is devoid of any evidence that the

- staff responded to the Mother's concern by asking for consent to contact the Student's physician to determine to learn about whether the Student's disability impacted the educational program in any way. (Testimony, Mother, B-14)
10. Student had the same Special Education teacher ("SPED Teacher 1") in the 4<sup>th</sup> and 5<sup>th</sup> grade until approximately a month before the Triennial Evaluation. SPED Teacher 1 had reported the case to DCF which was later dismissed. Subsequently, the Mother requested that the Student be assigned to another Special Education Teacher. The record reflects this SPED Teacher 1, who was the primary provider of instruction in the 4<sup>th</sup> and 5<sup>th</sup> grade, did not participate at nor provide a report to the PPT that reviewed the Triennial Evaluation. Other than a statement from the Classroom Teacher that the Student was meeting grade level expectations, the record does not reflect that data on academic and literacy progress was shared at the PPT meeting. (B-16)
  11. The Classroom Teacher testified that the Student was a "great teammate". He did not have any specific memory of the Student's performance other than the fact that he did not note any problems. (Testimony, Stewart)
  12. With regard to the unchanged "Concerns/Challenges" section in the IEPs referring to the Student's reading level (as discussed in paragraph 6 above), SPED Teacher 1 testified that Fountas and Pinnell Level S was a beginning 5<sup>th</sup> grade level reading text and that the Student stayed at same Level S to the end of the school year. She testified that the double-digit multiplication is a skill that should be mastered by the end of the 4<sup>th</sup> grade but could not say whether the Student was able to master double digit multiplication. (Testimony, Keating)
  13. For the Triennial Evaluation, a second Special Education teacher ("SPED Teacher 2") conducted an educational evaluation consisting of the Wechsler Individual Achievement Test 3<sup>rd</sup> Ed. (WIAT-III), Gray Oral Reading Tests- 5<sup>th</sup> Ed. (GORT-5) and the Comprehensive Test of Phonological – 2<sup>nd</sup> ed. (CTOPP-2). Her report indicates that she conducted only one testing day for all three assessments, but SPED Teacher 2 testified that she would have conducted the assessments over a few days. However, she did not have a specific memory of the dates of the administration. The test results did not deviate from the academic profile of the initial evaluation. The Student performed average to above average in most areas except for timed tests involving recognition of letters and digits. In these subtests, she performed below average and low average. The evidence is clear that the same issues of rapid recognition of symbols, letters and digits initially identified as deficits in the March 2017 initial evaluation continued to be challenging for Student. (Testimony, Fernandez, B-13)
  14. SPED Teacher 2 was familiar with the Student because she was her 3<sup>rd</sup> grade Special Education teacher. However, SPED Teacher 2 had not taught the Student in the 4<sup>th</sup> and 5<sup>th</sup> grade and did not do so until a month before the Triennial Evaluation. The record reflects that as late as of December 20, 2019, there was no update on the Student's progression in her Special Education program in her IEP. This was so despite an October 24, 2019 meeting in which SPED Teacher 1 attended wherein the IEP was reviewed and revised. The "Concerns/Challenges" section remained the same and Student's performance was deemed not to be age appropriate. (B-14)

15. The School Psychologist conducted the Psychoeducational Evaluation. The evaluation results were generally consistent with Student's educational initial evaluation profile, except that now, there were additional elevated parents and teacher concerns about the Student's Executive Functioning regulation, including working memory, organization of materials, planning and planning/organizing in the months before the evaluation. The Student also appeared more anxious. The issues seem to subside in the short time immediately prior to the testing. The School Psychologist testified that he considered administering the NEPSY, a neuropsychological assessment because of these concerns but did not administer it. He did not give a reason for why he ultimately did not administer it. (B-12)
16. The Occupational Therapist's report under the "Planning and Ideas" section notes that "[Student] frequently has difficulty completing tasks with multiple step directions, and has difficulty performing tasks in proper sequence. Occasionally has difficulty coming up with new ideas and may tend to play the same activities over and over again. She sometimes has difficulty with organization of materials on or around her desk." (B-11)
17. The PPT convened on February 27, 2020. The record is clear that this was a contentious PPT meeting. The members of the School Team reviewed the results of testing and report from the Classroom Teacher that the Student was performing to grade level expectations. The record reflects that the PPT recommended that the Student be exited from Special Education and be provided with a Section 504 accommodation plan. The Mother objected and asked why additional tests were not administered, including the Rapid Automated Naming/Rapid Alternative Stimulus Test ("RAN/RAS"). She was told by the School Team that the Student had "aged out" of the test and that it was not valid. Nevertheless, the School Team offered to administer the test again. The Mother requested an Independent Educational Evaluation.

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

1. To ensure every child receives a free and appropriate public education as required by the IDEA, each eligible child must have an Individual Education Plan ("IEP"). An IEP must include: (1) a statement of the child's levels of academic achievement and functional performance, (2) measurable annual goals, (3) a description of how progress will be measured and when progress reports will be provided, and (4) a statement of the special education services and supplementary aids to be provided. 20 U.S.C. § 1414(d)(1)(A); see 34 C.F.R. §300.320(a).
2. The IEP must be "reasonably calculated to enable the child to receive educational benefits." *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 at 206-07 (1982). An IEP need not maximize the potential of a disabled student, because Congress did not intend the IDEA to guarantee a specific outcome, but to provide a basic level of educational opportunity. *Rowley*, 458 U.S. at 192, quoting S. Rep. No. 94-168, at 11 (1975).
3. Under the IDEA and Connecticut state law, a school district must reevaluate a student who receives special education services at least once every three years. This triennial

- reevaluation's purpose is evaluate a student's relevant functional, 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. Sec. 10-76d-9.
4. If a student receives an evaluation with which the parent disagrees, a parent has a right to an independent educational evaluation ("IEE") at public expense, which means at no cost to the parent. 34 C.F.R. § 300.502, R.C.S.A. Sec. 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. 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. Sec. 10-76d-9(c)(2)
  5. The IDEA only requires "the door of public education [to] be opened for a disabled child in a 'meaningful' way." *Walczak v Florida Union Free School District*, 27 IDELR 1135, 142 F.3d at 130 (2d Cir 1998), *citing Rowley, supra*. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132. An "appropriate" reevaluation is one that complies with IDEA and Connecticut regulations to produce information Student's relevant functional, developmental, and academic skills to determine whether the student continues to be eligible for special education services and to determine to provide any necessary updates to the student's IEP. 34 C.F.R. §300.301-§300.305; R.C.S.A. Sec. 10-76d-9.
  6. The purpose of reevaluation under the IDEA is to determine continuing eligibility and to provide necessary updates and modifications for the Student's IEP. 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. Sec. 10-76d-9; *Fort Osage R-1 School District v. Sims*, 56 IDELR 282 (8th Cir. 2011); see also *Torda v. Fairfax County School Board*, 61 IDELR 4 (4th Cir. 2013, unpublished), cert. denied, (U.S. 03/24/14) (No. 13-6908).
  7. IDEA regulations provide standards for the manner in which evaluations are to be conducted. These standards are set forth in 34 C.F.R. §300.300 to 34 C.F.R. §300.311. Connecticut state regulations implement IDEA regulations in R.C.S.A. Sec. 10-76d-9(a).
  8. 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. 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 providing relevant information to assist in determining the educational needs of the child. 20 U.S.C. §1414(a)(2)(B)(ii), (3)(A)(i-ii); 34 C.F.R. §304; R.C.S.A. Sec. 10-76-9(a)
  9. No single measure or assessment may be used as the sole criterion 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 assessments in accordance with the test producer's instructions. 34 C.F.R. §300.304(b)(1) and (2) and (c)(iv); R.C.S.A. Sec. 10-76-9(a).
10. The instruments used for assessments must be technically sound and may be used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. See 34 C.F.R. §300.304(b)(3). "Technically sound instruments generally refers to assessments that have been shown through research to be valid and reliable." 34 C.F.R. § 300.304 *Comments* (2006).
  11. 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).
  12. Assessments must be 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). 34 C.F.R. §300.304(c)(3).
  13. 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. 24 C.F.R. §300.304(4).
  14. Applying the IDEA and Connecticut regulations cited above, this Hearing Officer finds that the Psychoeducational Evaluation was not appropriate for a number of reasons. 1) The evaluation was *not* tailored to the needs of the Student nor did it assess the Student in all areas related to suspected disability. Rather, the evaluation consisted of basic assessments used to evaluate Learning Disability/ Dyslexia and ignored Student's diagnosis of Ehlers-Danlos Syndrome as it impacted on the Student's educational access. The School Team did not obtain consent to contact the Student's physician to learn about the impact of the Student's Ehlers-Danlos Syndrome in academic performance nor needs in the physical education curriculum. 2) The Educational Evaluation report did not accurately reflect the dates of administration. SPED Teacher 2 did not have a clear memory of the details of the administration except through review of the report. The focus of the educational evaluation was on testing and no information was provided regarding academic progress. The validity of the report is questionable. 3) There was no record of any data or samples of classwork being provided to the PPT to support the results of the standardized assessments. In fact, the IEPs throughout 2019 repeated the same statement that the Student was not performing to age-appropriate standards in the one area that the Student was struggling entitling her to Special Education. This statement was removed only from the IEP that discuss her exit from Special Education.
  15. In Marshall Joint School District No. 2 v. C.D. et al., 592 F.Supp. 1059 (W.D. Wis. 2009) the United States District Court upheld an Administrative Law Judge's decision involving a

Student with Ehlers-Danos Syndrome. While each Student with a Disability is unique, including Students with Ehlers-Danos Syndrome, the Hearing Officer finds the case to be compelling of the need for further comprehensive evaluation. The Student in Marshall Joint School District No. 2, like the Student in this case, had a profile of Learning Disability, ADHD and anxiety among other symptoms due to Ehlers-Danos Syndrome, such that the Student's diagnosis should have been evaluated for a suspected disability in need of Special Education and Related Services. The Triennial Evaluation was inappropriate.

16. The Board's evaluation was not in compliance with 34 C.F.R. §300.301- 305 and R.C.S.A. Sec. 10-76d-9(a).

**FINAL DECISION AND ORDER:**

1. The Board's evaluations were not appropriate.
2. The Parents are entitled to an Individual Educational Evaluation at public expense which shall include the following: 1) a comprehensive literacy evaluation, including an academic record review, to be conducted by Sheryl Knapp, M.Ed. of Literacy Learning, if Ms. Knapp is available, and if not, another evaluator similarly qualified, and 2) a comprehensive psychoeducational evaluation by a qualified examiner administering, among other assessments, the NEPSY or suitable substitute, taking into account, information from Student's physicians, and the impact of the Student's Ehlers-Danos Syndrome as the condition relates to the Student's needs for Special Education and Related Services.