

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Vernon Board of Education and Student

Appearing on behalf of the Board of Education: Attorney Christine Chinni
Chinni & Associates, LLC
14 Station Street
Simsbury, CT 06070

Appearing on behalf of the Student: Parent, *Pro Se*

Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

The following issues were identified for determination at the hearing:

1. Is the Board of Education’s evaluation appropriate?
2. If not, is the Student entitled to an independent education evaluation at public expense?

PROCEDURAL HISTORY:

The Board of Education initiated this special education due process case on July 29, 2021. This Impartial Hearing Officer was assigned to the case on July 30, 2021. A Prehearing Conference was convened on August 16, 2021. The Student’s Parent appeared on behalf of the Student and Attorney Christine Chinni appeared on behalf of the Board of Education. It was established that the initial deadline for filing the final decision in this case was September 10, 2021. That deadline was later extended to October 22, 2021.

An evidentiary hearing was conducted by video conference on September 3, 2021.

The following witnesses testified at the hearing:

- Dr. Elizabeth Taylor, School Psychologist
- Emily Orłowski, Special Education Teacher
- Michelle Carr, Speech Language Pathologist
- Melissa Iles, Director of Pupil Personnel
- Melissa Ross, Special Education Supervisor
- Parent

Hearing Officer Exhibits HO 1 through HO 3 were entered as full exhibits. In addition, Board of Education Exhibits B 1 through B 14 were entered as full exhibits. The Student did not offer any 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 of Education filed this request for due process to establish that its Evaluations of the Student were appropriate in response to the Student's request for an Independent Educational Evaluation ("IEE") at public expense. Although the Student's Parent expressed disagreement with the evaluations, the Parent did not submit any evidence that the Evaluations were not appropriate. The Board of Education submitted overwhelming evidence that the Evaluations were appropriate and in accordance with applicable legal standards.

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 contained in the Regulations of Connecticut State Agencies ("R.C.S.A."), as well as 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:

1. The Student was born on February 27, 2017 and lives with his Parents in Vernon, Connecticut. He attends a preschool program in the Vernon Public Schools and receives special education services under the identification category of Autism. (Exhibit HO 1)
2. The Vernon Board of Education ("Board") evaluated the Student in February 2020 and March 2021. On July 22, 2021, the Student's Parent requested an independent educational psychoeducational evaluation and speech and language evaluation paid for by the Board. The Board denied the request and filed this request for a special education due process hearing. (Exhibit HO 1)
3. The Student was referred to the Board for special education and related services by the Birth to Three System on June 28, 2019. The Board convened a Planning and Placement Team ("PPT") meeting to discuss the referral on November 15, 2019. At that time, the Student had already received a diagnosis of Autism Spectrum Disorder. The areas of concern noted were:

“Communication, Social Emotional, Cognition and Perceptual Motor.” (Exhibit B 1; Exhibit B 2; Testimony of Iles)

4. The PPT reviewed the referral and determined that an initial evaluation was warranted. The Student’s Parent agreed to the proposed evaluation and consented to have the planned assessments administered. (Exhibit B 2; Testimony of Iles)

5. Special Education Teacher Emily Orłowski and Speech-Language Pathologist Michelle Carr administered the Battelle Developmental Inventory-Second Edition Normative Update (“BDI-II NU”) in January 2020 to assess the Student’s global developmental skills and determine whether he qualified for special education services. (Exhibit B 3; Testimony of Taylor; Testimony of Orłowski; Testimony of Carr)

6. The BDI-II NU is a frequently used, standardized and individually administered assessment battery of key developmental skills in children up to seven years of age. The examined skills fall into five domains: Adaptive, Personal-Social, Communication, Motor and Cognitive. (Exhibit B 3; Testimony of Taylor; Testimony of Orłowski; Testimony of Carr)

7. The BDI-II NU was administered in the Student’s native language of English and is presumably culturally, racially and clinically appropriate for use with the Student. The test is considered valid and reliable for the purpose of assessing developmental skills in children up to seven years of age. In addition, Orłowski and Carr were properly trained, experienced and credentialed to administer the BDI-II NU and did so in accordance with the publisher’s instructions. (Exhibit B 3; Testimony of Taylor; Testimony of Orłowski; Testimony of Carr)

8. In addition, School Psychologist Kara Ormsby observed the Student in a classroom setting and administered the Social Responsiveness Scale-2d Edition (“SRS-2”) in February 2020. The SRS-2 is a standardized rating scale that looks at behavior and communication typical of individuals with Autism Spectrum Disorder in the following domains: Social Awareness, Social Cognition, Social Communication, Social Motivation and Restricted Interests and Repetitive Behavior. (Exhibit B 4; Testimony of Taylor)

9. The SRS-2 is also standardized and individually administered. It was administered in English and is racially, culturally and clinically appropriate for use with the Student. It is a valid and reliable test of social responsiveness for young children with autistic characteristics. Kara Ormsby was properly trained, experienced and credentialed to perform the test and she did so in accordance with the publisher’s instructions. (Exhibit B 4; Testimony of Taylor; Testimony of Iles)

10. Classroom observation is a generally accepted tool to assess a student’s social skills, communication and classroom functioning. (Testimony of Taylor)

11. The PPT met on February 11, 2020 to review the Evaluation and determine the Student’s eligibility for special education services. (Exhibit B 5; Testimony of Iles) The PPT determined that the Student was eligible for special education services and proposed a preschool program for the Student, including a set of goals and objectives. (Exhibit B 5; Testimony of Iles)

12. The Student's Parent chose not to consent to the Board's proposed special education program, and he did not attend. (Exhibit B 6; Testimony of Iles)

13. On February 2, 2021, the Student's Parent submitted a new referral to the Board to determine eligibility for special education services. The Parent expressed concerns about the Student's speech and language as well as "social interaction." (Exhibit B 7; Testimony of Ross)

14. A second PPT meeting was convened on February 8, 2021. The Board proposed to reinstate the recommendations of the earlier PPT, but the Student's Parent refused and requested an out of district placement. The Student's Parent did, however, consent to a further initial Evaluation. (Exhibit B 9; Testimony of Ross)

15. Special Education Teacher Susan Zylberman and a Speech-Language Pathologist administered the Battelle Developmental Inventory – 3rd Edition ("BDI-III") and interviewed the Student's Parent in February 2018. The BDI – III is standardized and individually administered assessment of developmental skills in children in five domains: Adaptive, Social/Emotional, Communication, Motor and Cognitive. (Exhibit B 10; Testimony of Orlowski; Testimony of Carr)

16. The BDI-III was administered in English and is culturally, racially and clinically appropriate for use with the Student. The test is valid and reliable for the purpose of assessing developmental skills in children. In addition, the professionals who administered it were properly trained, experienced and credentialed to administer the BDI-III and did so in accordance with the publisher's instructions. (Testimony of Orlowski; Testimony of Carr; Testimony of Ross)

17. In addition, a Board Certified Behavior Analyst observed the Student at the request of the PPT. (Exhibit B 11)

18. The PPT met on March 11, 2021 to review the evaluation and determine the Student's eligibility for special education services. The PPT determined that the Student was eligible for special education services and proposed goals and objectives and a preschool placement for the Student. (Exhibit B 11; Testimony of Ross; Testimony of Taylor; Testimony of Carr)

19. On July 22, 2021, the Student's Parent requested an independent education psychoeducational evaluation and a speech-language evaluation paid by the Board. (Exhibit HO 1) The Student's Parent disagreed with the 2020 Evaluation because the Student's Parent contends that it was contrived to have the Student educated in the Board's public school system. (Testimony of Parent) The Student's Parent also suggested that the 2021 Evaluation was only conducted because he requested an out of district placement for the Student. (Testimony of Parent)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq* ("IDEA") is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education ("FAPE"). *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982) ("Rowley").

2. In *Rowley*, the United States Supreme Court set out a two-part test for determining whether a local board of education has offered FAPE in compliance with IDEA. The first part of the test is whether there has been compliance with the procedural requirements of IDEA. The second part is whether the student's Individualized Education Program ("IEP") is reasonably calculated to enable the student to receive educational benefit in light of the student's individual circumstances. *Id.* at 206-207. See also, *Endrew F. v. Douglas City School District*, 580 U.S. __, __ (2017); *Cerra v. Pawling Cent. Sch. Dist.* 427 F.3d 186, 191 (2d Cir. 2005); *M.S. v. Board of Education of the City School District of the City of Yonkers*, 231 F.3d 96, 103 (2d Cir. 2000).

3. The first prong of the *Rowley* inquiry, whether the Board of Education complied with IDEA's procedural mandates, is a critical one. As the Supreme Court said in *Rowley*, Congress based IDEA on the "conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Rowley* at 206. The procedural requirements of IDEA are designed to guarantee that the education of each student with a disability is individually tailored to meet that student's unique needs and abilities and to safeguard against arbitrary or erroneous decision-making. 20 U.S.C. Sections 1412(1) and 1415(a)-(e); *Daniel R.R. v. State Board of Education*, 874 F.2d 1036, 1039, and 1041 (5th Cir. 1989).

4. Primary among IDEA's procedural requirements is that a board of education must conduct a full and individual initial evaluation of each student in order to determine eligibility and a need for services before special education or related services are provided. 20 U.S.C. Section 1414(a)(1); 34 C.F.R. Section 300.301; R.C.S.A. Section 10-76d-9; R.C.S.A. Section 10-76d-10.

5. A parent or a state or local educational agency, a teacher or doctor, can request an initial evaluation to determine if a child is eligible to receive special education or related services due to a disability rendering the child in need of specialized instruction or services to benefit from education. Such an evaluation must be completed and the educational program, if any, put in place within 45 days of the referral. R.C.S.A. Section 10-76d-7; R.C.S.A. Section 10-76d-13.

6. An initial evaluation must satisfy several procedural requirements: It must use a variety of tools and strategies, not use any single measure or assessment to determine eligibility, and use technically sound assessment instruments. 34 C.F.R. Section 300.304(b). Assessment instruments must not be racially or culturally discriminatory, must be administered in the child's native language and must be valid and reliable for the purposes of their use. Assessments must be administered by trained and knowledgeable staff in accordance with instructions provided by their producer. Assessments must be tailored to investigate specific areas of need and selected to accurately reflect the child's aptitude. The evaluation must be designed to address all areas of suspected disability and identify all of the child's special education needs. 34 C.F.R. Section 300.304(b) and (c).

7. When a student's parent disagrees with an evaluation performed by a board of education, the student may request an Independent Education Evaluation at public expense. 34 C.F.R. Section 300.502; R.C.S.A. Section 10-76d-9(c)(1) and (2). In response to such a request, a board of education must either provide the requested IEE at public expense or request a special education due process hearing to prove that its evaluation is "appropriate", meaning that it is in compliance with applicable procedural requirements. 34 C.F.R. Section 300.502; R.C.S.A. Section 10-76d-9(c)(1) and (2)

8. The evidence was undisputed in this case that the Board's 2020 and 2021 Evaluations were appropriate and in compliance with applicable procedural requirements.
9. The 2020 Evaluation used two formal assessment instruments, the BDI-II NU and the SRS-2 as well as the less formal but regularly employed tool of a classroom observation. It did not rely on a single measure to determine eligibility. Similarly, the 2021 Evaluation employed the updated BDI-II assessment tool as well as a parent interview and observation by a Board Certified Behavior Analyst. Like the 2020 Evaluation, the 2021 Evaluation relied on several measures to determine eligibility.
10. The BDI-II NU, BDI-III and SRS-2 are all technically sound, valid and reliable instruments for the uses to which they were put in assessing the Student.
11. In addition, these assessments were administered to the Student in his native language. Since these assessments are used frequently in public schools in the area, it is also reasonable to conclude that they are not racially or culturally discriminatory for this Student. They were administered by trained and knowledgeable staff with appropriate credentials in accordance with the instructions of the publishers.
12. Finally, the assessments were specifically selected to address the identified concerns relating to this individual Student - communication, social/emotional, cognition and perceptual motor. The instruments were selected to provide a comprehensive canvass all of the Student's suspected disabilities and investigate all of his special education needs.
13. The Student's Parent testified that he disagreed with the Board's Evaluations because he felt they were manipulated or designed to show that the Student should be placed in the Board's public school system rather than an out of district program. There was no evidence produced, however, that the particular instruments or assessments used by the Board were or could be used for such a purpose or that the staff who administered them could or did do anything to influence such a result.
14. The Board's Evaluations were appropriate and complied with legal standards.

FINAL DECISION AND ORDER:

The Evaluations at issue were appropriately designed and administered. They complied with the procedural requirements of IDEA. The Student is not entitled to an Independent Education Evaluation at public expense.