

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Region 18 Board of Education v. Student

Appearing on behalf of the Parents: *Pro se*

Appearing on behalf of the Board: Kyle McClain
Zangari, Cohn, Cuthbertson, Duhl & Grello
750 Main Street, Ste 902
Hartford, CT 01603

Appearing before: Kelly Moyher, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Was the reevaluation of the Student appropriate?
2. If not, are the Parents entitled to an IEE at Board expense?

PROCEDURAL HISTORY:

The Board filed the Due Process Complaint/Hearing Request on November 10, 2022. The Hearing Officer was appointed on November 15, 2022. A Prehearing Conference took place on December 2, 2022 and hearing dates were scheduled for January 5, 6 and 9, 2023. The January 9th date was ultimately not needed, and the hearing took place on January 5th and 6th.

The first date of hearing convened on January 5, 2023. The Parents submitted exhibits via email and additional Parent exhibits were submitted during the two-day hearing. The Parents entered Exhibits P-1-P-7. The Parents both testified as witnesses.

The Board presented the testimony of three witnesses. They were Emily Macione, Special Education Teacher, Marci Kania, School Psychologist and Melissa Dougherty, Director of Special Services. The Board entered Exhibits B-1-B-15. The Board also filed a Motion *In Limine* prior to the start of the hearing. In its filing, the Board requested the following be precluded from the hearing; 1. Any claim or discussion concerning the Parent's disagreement with the decision of the PPT which met on February 7, 2022, that the Student was not found eligible for special education and related services and was exited from special education; 2. Any claim or discussion concerning the timeliness of the Board's filing of its Request for Due Process in response to the Parents' request for an IEE; and 3. The exhibits submitted by the Parents. The Hearing Officer granted the Motion in regards to issues 1 and 2, and denied the motion as to issue 3.

The Hearing Officer submitted the Request for Due Process Hearing filed by the Board on November 10, 2022 as exhibit HO-1.

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 Parents signed a Notice and Consent to Conduct a Reevaluation form at a PPT on September 17, 2021. The reevaluation was conducted during the end of 2021 and the beginning of 2022. The PPT met on February 7, 2022 to conduct an annual review, determine continuing eligibility for special education and related services and transition planning. The PPT determined the Student was no longer eligible for special education and related services and the Student was exited from special education on February 28, 2022 and transitioned to a 504 plan. The Board filed a Due Process Complaint stemming from the Parents request for an IEE which was denied on November 4, 2022.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Sec. 10-76h and related regulations, 20 United States Code Sec. 1415(f) 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, Sections 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. The Student was born on January 27, 2005, and is a 12th grade student currently attending Lyme-Old Lyme High School (LOLHS). The Student began to struggle in school in the 3rd grade and continued to struggle throughout his time at various schools while living in New York. The Student relocated from New York and enrolled in the Region 18 school district prior to the start of the 2021-2022 school year. He had previously been identified as eligible for special education and related services and was identified after his enrollment in the district as eligible for special education and related services under the primary disability category of Other Health Impairment-Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (OHI-ADD/ADHD). (B-1, B-3).

2. At a PPT in September of 2021, the Student's team planed for evaluations to be completed and reviewed by 2/15/22. As part of the Student's triennial reevaluation, the Student was referred for testing to Emily Macione and Marci Kania, who administered an Educational Evaluation and a Psychological Evaluation, respectively. (B-5, B-6, Testimony E.Macione, Testimony M. Kania).
3. On the dates of 1/3/22, 1/4/22 and 1/5/22, Ms. Macione administered an educational evaluation. Ms. Macione has over 15 years of experience as a special education teacher, specifically as a special education teacher in the district since 2007, and as Department Leader since 2017. She holds Master if Science degree with a focus in K-12 Special Education and a 6th year degree and certificate in Educational Leadership. She also holds a TEAM Reader Certification. Ms. Macione testified that she has been involved in evaluations and reevaluations of students between 50 and 60 times and has herself administered 30-40 educational evaluations. (B-15, Testimony E. Macione).
4. Ms. Macione stated the Student was added to her caseload as soon as he came to the District and she began meeting with the Student at the beginning of the 2021-2022 school year for one period every other day prior to the evaluation as part of the Student's IEP. During her time with the Student in Mastery Lab, the Student was given support with organization/prioritization of his work and support with writing. The lab was 84 minutes per session. Per Student and Parent request, this time was reduced to one weekly check-in for 20 minutes in November of 2021. (B-2, Testimony, E. Macione).
5. The Education Evaluation administered to the Student was the Wechsler Individual Achievement Test (WIAT-IV). The Student consistently scored in the Average to Very High Average range, with one Extremely High score in Reading Fluency/Decoding, and one Low Average score in Writing Fluency/Sentence Writing. Ms. Macione addressed the Student's Low Average score in regards to Sentence Writing Fluency and explained it as a subtest which asks the examinees to write as many sentences as possible within 5 minutes using a target word, and measures the number of words written, use of the target word, and subject-verb agreement. Ms. Macione remarked that the Student scored an 89 on the subtest, which was one point off from the Average range of 90-109. Ms. Macione also testified that after her review of the file, prior neuropsychological testing and the results of the educational evaluation that she did not believe there was anything else that needed to be addressed with additional testing. (B-2, B-8, Testimony, E. Macione).
6. Ms. Marci Kania, school psychologist, administered a Psychological Evaluation of the Student. Ms. Kania has 23 years of experience as a school psychologist at LOLHS and has worked as a school psychologist since the fall of 1995. She holds a Masters Degree in School Psychology and a Certificate in Advanced Study. She testified that she provides counselling for both 504 and special education students at the high school and has administered over 300 evaluations and reevaluations. She also noted that she does practice

evaluations and participates in additional education training as part of her continuing education as a school psychologist (B-14, Testimony, M. Kania).

7. Ms. Kania testified that she met the Student when he was enrolled, and worked with him in weekly counselling sessions at the start of the 2021-2022 school year as part of the Student's IEP that was in place at the time. (Testimony, M. Kania).
8. Prior to the evaluations, Ms. Kania testified that she did a records review of the Student's file considering academic performance, attendance, behavior issues and evaluations. She testified that she met with the Student and his Parents separately prior to the evaluation as part of the clinical interview. She noted Parent concerns of the Student in the area of working memory, dealing with challenging situations, behavior at home, impulse control and challenges with taking responsibility for his struggles versus blaming others. (B-2, Testimony, M. Kania).
9. The Psychological Evaluation of the Student, conducted by Ms. Kania, took place on the following dates in the fall of 2021: 10/6, 10/29, 11/5, 11/12, 11/19 and 12/6. In planning for the administration of the evaluation, Ms. Kania testified that she took the Student's ADHD and anxiety into consideration and planned for limited testing times and the spacing out of testing dates.
10. The Psychological Evaluation was composed of the following evaluative measures: Clinical Review, Record Review, Classroom Observation, the Wechsler Adult Intelligence Scale-Fourth Addition (WAIS-IV) Q Interactive, the Achenbach System of Empirically Based Assessment (ASEBA) and the Behavior Rating Inventory of Executive Function-Second Edition (BRIEF-2).
11. On the first day of testing, Ms. Kania noted that the Student self-advocated for himself by asking questions about the evaluation being performed and how they would be used. She explained the assessments to be performed and how they would be administered and stated the information from the evaluation would be shared with the Student's team and used to inform next steps at an upcoming meeting of the PPT. (B-2, Testimony M. Kania).
12. During the classroom observation portion of the evaluation, Ms. Kania noted the Student asked questions of the teacher, worked independently following his questions, and was on task appropriately 100% of the time during the observation. The Student did not engage in any distracting behaviors to himself or to his peers. (B-2, Testimony M. Kania).
13. On the WAIS-IV, Ms. Kania noted the following Standard Score Ratings: Verbal Comprehension, 114 (High Average); Perceptual Reasoning, 100 (Average); Working Memory, 89 (Low Average); Processing Speed, 97 (Average). The Students Full Scale IQ was noted to be 102 (Average). (B-2, Testimony M. Kania).

14. In regards to the Students Full Scale IQ, Ms. Kania noted in the evaluation that the Student's score of 102 'would classify his global IQ as falling within the average range except that there was too much variability within the domain'. Ms. Kania went onto explain the following in regards to the Student's Full Scale IQ and the General Ability Index (GAI): "The GAI is an optional composite summary score that is less sensitive to the influence of working memory and processing speed. Because working memory and processing speed are vital to a comprehensive evaluation of cognitive ability, it should be noted that the GAI does not have the breadth of construct coverage as the FSIQ". Ms. Kania noted the Student's GAI is 107 which is at the high end of the average range and considered to be within normal limits. Ms. Kania noted that she specifically addressed the GAI in the evaluation to look at working memory and to be thorough in her evaluation. (B-2, Testimony M. Kania).
15. In regards to the Student's WMI on the WAIS-IV, Ms. Kania noted the Student's ability in this area was assessed by two tasks. The Student scored an 89 in this area which is one point out of the average range and still considered to be within normal limits. Ms. Kania noted this domain was the most challenging for the Student due to his performance on the arithmetic subtest which represented a skill weakness. (B-2, Testimony M. Kania).
16. Addressing the ASEBA, Ms. Kania noted the results showed the Student's difficulty managing himself both with internal and external behaviors at home. There were no areas of concern noted through school reports or through the Student's self-report. Ms. Kania stated that it is common to see a difference between behaviors at home and at school. She stated the assessment showed the Student's success with managing his emotions and behaviors at school, while pulling out his struggles at home. Ms. Kania also noted the ASEBA measures anxiety and would specifically pull out any issues in this area. She stated that the Student did not have any outlying issues that were particularly concerning. (B-2, Testimony M. Kania).
17. In regards to the BRIEF 2, Ms. Kania noted potentially clinically significant scores from the Parents in two areas: behavioral regulation and emotional regulation. Also noted were the scores at home for working memory and plan/organize. In the evaluation regarding working memory Ms. Kania notes that "It is important to note that on both home respondents, [the Student's] score was clinically significant indicating that although he may have the ability for function typically within his working memory skills he may not be applying them within his home setting with fidelity". Concerns noted at home are trouble with chores or tasks that have more than one step, trouble finishing tasks such as chores or homework and a short attention span. Concerns were noted at home in the area of plan/organize through the following examples: underestimation of time needed to finish tasks, planning ahead for school assignments, getting caught up in details and missing the big picture, lacking follow through, good ideas but does not get them down on paper, becoming overwhelmed by large assignments and staring assignments or tasks at the last minute. (B-2, Testimony, M. Kania).
18. In the Summary and Recommendations portion of the evaluation, Ms. Kania notes that the Student's "overall cognitive functioning is predominantly in the high end of the average

range and within normal limits when compared to other individuals within his age range”. She found that the “testing appears to be a valid indicator of [the Student’s] current cognitive functioning”. She found that the Student is “maintaining a level of functioning within the school setting in all areas viewed as typical for his age group”. She noted some areas of vulnerability which are impacting him outside of the school setting. In regards to Executive Functioning, Ms. Kania noted success in the management of overall executive functioning in the school setting, with struggles at home in multiple domains of his executive functioning. Specifically, Ms. Kania notes “in relation to his primary OHI classification, [the Student] struggles more so within the home setting with many aspects of his behavior impacted by his struggles with focus, sustained behavior and executive functioning”. (B-2).

19. Prior to finalization of the Psychological Evaluation, Ms. Kania submitted her draft report to the Parents for review. The Parents submitted the report back to Ms. Kania with edits and suggestions. Ms. Kania stated that she noted all of the Parents edits and suggestions and added some language suggested by the Parents but not all. (P-7, Testimony, M. Kania).
20. The following recommendations to support the Student in school were noted: responding to the Student’s challenges with skills measured within the WMI domain by building his ability to chunk information; connect new information to concepts he already knows; the Student should work with his support team to make sure he is able to identify main ideas of stories; consideration for extended time for timed tasks, both in class and with standardized assessments; consideration of the need for work bank/formula bank to support the Student in being assessed more accurately on skills versus his ability to retrieve essential information; and, for the Student to work with the school transitional coordinator to explore possible career options and job shadow opportunities. (B-2).
21. In addressing struggles at home, the evaluation notes suggestions for the Parents to work with the Student regarding his difficulties with self-monitoring, planning and organizing, and organization of materials. (B-2.)
22. During the testimony of the Parents, both noted concerns regarding the Student’s working memory. Concerns were also noted in the areas of organization and time management at home. They stated that they felt the Student was not doing as well at school recently and believe the Student is not accessing all of the supports that are available to him within the school setting. They reiterated their concerns regarding the Student’s reevaluation, specifically noting their concern that the Student’s psychiatrist was not consulted nor did Ms. Kania reach out to any other specialists the Student had been meeting with or was evaluated by. (P-4, Testimony, J. Griffin, Testimony, L. Richmond).
23. At a PPT meeting on February 7, 2022 the team found that the Student was no longer eligible for special education services. The Student was exited from special education and related services on February 28, 2022 and was transitioned to a 504 plan . (B-10).

24. Over the course of the following months the Parents indicated to school officials they were considering requesting an IEE. On November 1, 2022 the Parents requested an IEE and the request was denied on November 4, 2022. (P-5, Testimony, M. Dougherty).
25. On November 10, 2022 the Due Process Hearing was requested by the Board and was duly noticed to all parties. (HO-1).

CONCLUSIONS OF LAW AND DISCUSSION:

1. 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 to 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. Sec. 1414(a)(2)(B)(ii); 34 C.F.R. Sec. 300.305(a)(2)(1)(B)(iv), R.C.S.A. Sec. 10-76d-9.
2. 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. Sec. 1414(a)(2)(B)(ii); 34 C.F.R. Sec. 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).
3. IDEA regulations provide standards for the manner in which evaluations are to be conducted. These standards are set forth in 34 C.F.R. Sec. 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).
4. 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. Sec. 1414(a)(2)(B)(ii), (3)(A)(i-ii); 34 C.F.R. Sec. 300.304; R.C.S.A. Sec. 10-76d-9(a)
5. 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. Sec. 300.304(b)(1) and (2) and (c)(iv); R.C.S.A. Sec. 10-76d-9(a).

6. 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. Sec. 300.304 *Comments* (2006).
7. 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. Sec. 300.304(b)(2).
8. 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. Sec. 300.304(c)(3).
9. 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. Sec. 300.304(4).
10. 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. Sec. 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. Sec. 300.502; R.C.S.A. Sec. 10-76d-9(a).
11. The evidence was undisputed in this case that the Board’s reevaluation of the Student, which included an Educational Evaluation and a Psychological Evaluation, was appropriate and in compliance with applicable procedural requirements.
12. The reevaluation of the Student used several formal assessment instruments. For the Educational Evaluation the WIAT-IV was used. For the Psychological Evaluation the WIAS-IV, the ASEBA and the BRIEF-2 were used. The evaluation tools are all technically sound, valid and reliable instruments for the uses to which they were put in assessing the Student.
13. The assessments used were administered to the Student in his native language. It is reasonable to concluded that the assessments are not racially or culturally discriminatory for the Student as these assessments are frequently used in public schools in this area.

14. The assessments were specifically selected to address the identified concerns of this Student – ADHA, working memory, anxiety, emotional/social behavior and executive functioning.
15. In compliance with the IDEA, evaluations of the Student were conducted by Ms.Emily Macione and Ms. Marci Kania, certified and licensed professionals and evaluators who were trained, knowledgeable and appropriately certified and who employed a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the Student, including information provided by the Student to determine whether Student continued to be eligible for special education services and to update Student’s IEP. R.S.C.A. Sec 10-76-9(a) 34 C.F.R. Sec. 300.304(b)(4).
16. No single measure or assessment was the sole criterion for determining eligibility for special education services and the determination of eligibility did not rest on an intelligence quotient. The determination of continuing eligibility also took into account factors such as the Student’s functional physical, medical and developmental history and student’s present academic performance. 34 C.F.R. Sec. 300.304(b)(1) and (2); 34 C.F.R. Sec. 300.304(c)(2) and (3).
17. Both Board employees who evaluated the Student are experienced professionals who are trained and knowledgeable and appropriately experienced and certified to conduct the assessments and administered the assessments in accordance with the test producer’s instructions. 34 C.F.R. Sec. 300.304(c)(1)(iv) and (v).
18. The testing instruments are widely recognized as technically sound instruments, 34 C.F.R. Sec. 300.304 (b)(3) and 34 C.F.R. Sec. 300.304(c)(3) as are the chosen assessments.
19. The results of the assessments were used to determine whether the Student remained eligible for special education services.
20. The Board’s evaluations were in compliance with 34 C.F.R. Sec. 300.301- 305 and R.C.S.A. Sec. 10-76d-9(a).

FINAL DECISION AND ORDER:

The evaluations that made up the Reevaluation of the Student were appropriately designed and administered. The Student is not entitled to an IEE at public expense.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature



Hearing Officer Name in Print