

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Enfield Board of Education

Appearing on behalf of the Student:	Parent, self represented
Appearing on behalf of the Board:	Attorney Christine Chinni Chinni and Associates 14 Station Street Simsbury, CT 06070
Appearing before:	Melinda A. Powell Esq. Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board comply with Child Find?
2. Is the Student eligible for special education and related services under the Individuals with Disabilities Education Act?

PROCEDURAL HISTORY:

The Parent filed for a due process hearing in this matter on October 11, 2022, seeking review of the Board's decisions at the Planning and Placement Team meetings which found the Student ineligible for special education. The Hearing Officer convened a prehearing conference on October 20, 2022, and the parties were provided time to explore settlement through mediation. Hearing dates were set for December 19, 2022 and December 20, 2022. On December 8, 2023 Parent requested postponement due to illness, and the mailing date was extended to January 13, 2023. A hearing date was set for January 10, 2023. Further extensions were granted to schedule additional hearing dates, and to allow the parties to submit briefs. The mailing date was extended from January 13, 2023 to February 10, 2023, March 10, 2023, April 9, 2023 and May 9, 2023, to accommodate hearing dates. Hearing dates were cancelled in February and March due to illness or family matters, and then the hearings resumed in April. The Parent was also accommodated for a request on scheduling in order to call a witness, a math specialist, from Ben Bronz Academy. The mailing date then was extended to allow for the parties to receive the transcripts from the court reporter, submit briefs, from June 8 to June 30, and then to July 24, 2023.

The Hearing Officer issued two interim orders in this matter. The Parent requested that the Hearing Officer order that the Board place the Student in tiered intervention during the hearing. The Board objected, and the Hearing Officer found that she lacked jurisdiction to order that a Student in regular education, who had not yet been found eligible, receive specific regular education interventions. A dispute arose between the parties regarding the Parent's receipt of educational records and assessment. The Hearing Officer ordered certain documents be produced and denied other requests for documents that were not in existence or available. The Hearing Officer entered

said produced documents into the record as HO-2 through HO-10. The Due Process request was entered as HO-1. Parent Exhibits 1-7 were received in evidence, as were the Board Exhibits 1-6.

Testimony was received on six days: January 10, 2023, February 10, 2023, February 16, 2023, April 6, 2023, April 25, 2023 and April 26, 2023. Board employees who testified were: Maureen Burns, School Psychologist (Psych.); Jason LaMesa, Districtwide Coordinator of K-12 Mathematics Instruction (K-12 Math Coord.); Maria Mangiarelli, Coordinator of Special Education (Sped. Coord.); Alissa Molden, Speech and Language Pathologist (SLP); Deborah DelCoro, Occupational Therapist (OT); Kimberly Nadeau, School Counselor (Counselor). Parent (Parent) also testified and offered the testimony of Randy Ewart, a certified math teacher.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein. All evidence presented was considered in deciding this matter¹. 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).

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, and §§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 in the 7th grade during the hearing. There is a 504 Plan in place for the Student, who has a diagnosis of Attention-Deficit/Hyperactivity Disorder.
2. At a June 8, 2022 Planning and Placement Team (“PPT”) meeting, after referral by the Parent to determine IDEA eligibility, the PPT planned an evaluation in the areas of cognitive, achievement, social emotional, attention and executive function (B-1, B-2), and consent was received by the Parent. (B-1)
3. The Student's grades during this period were: English, 89%/B+; Social Studies 72%; French 92%; PE 100%/A+; Math 87%/B+; Choir A; and Science 84%. (B-4)
4. The school psychologist who completed the psycho-educational evaluation of the Student is certified by the State Department of Education, holds two master's degrees (education and educational psychology), a sixth level graduate certificate in school psychology. She has conducted about 3000 similar evaluations. She is also familiar with the Student because she also completed a psychoeducational evaluation in the fall of 2020 due to Parent referral. She Student was found not eligible at that time. The school psychologist has worked collaboratively with the Parent. The testing she conducted for the most recent referral used technically sound instruments; the Student was cooperative and motivated during testing, and yielded valid results. (Test. Psych)(B-4, P-3)

¹ Website materials referenced by Parent in her brief which were not in evidence were not considered.

5. The SLP who performed testing was not employed by the Board at the time of the hearing. (Test. SLP) Another SLP, with seventeen years experience, a master's degree in communication disorders, advanced graduate degree in childhood speech disorders a certificate of advanced specialty in Asperger's, who is also certified by the State Department of Education, testified in her stead. She was thoroughly knowledgeable about the testing provided. (Id.) The testing was completed using appropriate measures. (Id.) The testing did not indicate a speech and language disability. (Id.)
6. The following testing and results were obtained by the school psychologist, speech and language pathologist and occupational therapist (B-3, B-4, B-5)(Test. Psych, SLP, OT):

Testing Instruments	Area measured	Results
Test of Written Language-Fourth Edition	Student's contrived and spontaneous writing skills	Above average and Superior
WISC-V	Cognitive	Average to low average
WRAML-2	Memory	Average
Key Math	Math Skills	Average (Composite Score)
Conners 3 Self Report	Student's perception of attention, hyperactivity, learning problems, family relations	Elevated, Very Elevated
BASC-3 Parent report Teacher report	Social emotional behavior adjustment, executive functioning	At risk Typical, elevated for withdrawal and study skills
Piers-Harris Self-Concept	Self Concept	Anxious and Low Self-Concept
CELF-5	Language and Expression	High Average, Average
CTOPP-2	Auditory Skills for Language	
TAPPS-3	Phonological processing	Average (except for reverse number memory, which was below average)
Sensory Profile School Companion	Behavior	Very Typical

7. A comparison of the CELF-5 scores from 2020 to 2022 show improvement in those areas. The

- Student improved from average to high average and from low average to average, respectively, on the subtests administered. (B-4, P-4)
8. Improvement in the Student's personal assessment on the BASC-3 was also shown between June 2022 and September 2022. (B-4) Student also performed very well on the GORT-V, a test of reading skills. (Test. Psych.)
 9. Teachers did note on the BASC-3 a concern about withdrawal and study skills. (B-4) Additional teacher reports note that the Student has the ability to succeed with grade level work, understands concepts, is engaged in her work and ready to learn. (P-5).
 10. At a PPT meeting on October 7, 2022, the evaluations were reviewed to determine the Student's eligibility for special education and related services. (B-4). All school-based team members thoroughly explained the results of the evaluations and concluded that the Student did not require special education. (B-1, B-6, Test. Psych., OT, SLP, Sped. Coord.) Categories of speech and language, specific learning disability, specific disability in mathematics and reading, written expression, other health impaired and emotional disturbance were all reviewed. (Id.) The eligibility meetings totaled three hours, and Parent asked questions, provided information and input, and also had an educational advocate present during the meeting. (B-1, B-6, Test. Sped. Coord., Test. Counselor)
 11. The Board uses a computerized learning program called "iReady" in the classroom. (Test. K-12 Math Coord.) A student takes a diagnostic assessment and then based on areas of need, the software creates an individualized instruction path, called "My Path". The Path starts with their area of most need then the computer offers the next area after that area has been strengthened. (Id.) The assessment is adaptive. In October 2020, when the Student was in 5th grade, there was a lesson in geometry called "classify and compare quadrilaterals", that Student was working on in iReady. (Id.) That was a lesson at the third grade level. The software presents a video lesson and then an assessment. (Id.) The program is not used for progress monitoring. (Id.) It is one of the instructional tools the school uses to help students fill in gaps. The first fall diagnostic in iReady was completed by the Student in 6th grade (2021). Two lessons presented in the individualized learning plan were at a fourth grade level. (Id.) The individual reports show snapshots, but not progress. To evaluate progress, sequential reports need analysis. (Id.)
 12. During the fall of 2021, the iReady summary report shows that the Student worked on lessons spanning from third to fifth grade level and passed all but three lessons. (HO-10)
 13. In the winter through spring of 2022, the iReady summary report shows that the Student worked on lessons in the late fifth and early-late sixth grade level. (HO-10)
 14. The Parent was concerned that the Student performed poorly on a task which required reading an analog clock. (Test. Parent) That skill was introduced in the third grade and not repeated in the curriculum since that time. (Test. K-12 Math Coord.)
 15. Parent was also concerned that the Student had not mastered certain geometry concepts. (Test. Parent) The geometry unit was not introduced in 2020 due to the COVID-19 shutdown, and the Board has identified this content weakness among all students. (Test. K-12 Math Coord.)
 16. The Student is making progress in the regular education program with the supports and accommodations provided in her 504 Plan. (Test. Psych, Sped. Coord.)

CONCLUSIONS OF LAW:

1. "A child with a disability for the purposes of the IDEA is a student who has been evaluated and been determined to have one or more of 12 specified conditions and who, by reason of that condition, needs special education and related services." See 34 C.F.R. § 300.8(a)(1)." *N.C. ex rel M.C. v. Bedford Cent. School Dist*, 473 F. Supp. 2d 532, 542 (S.D.N.Y. 2007).
2. The IDEA defines a "child with a disability" as "a child ... with [inter alia], other health impairments, or specific learning disabilities; and ... who, by reason thereof, needs special education and related services." *C.B. on behalf of ZG., Department of Education of the City of New York*, 322 F. Appx 20 (2d Cir. 2008), citing 20 U.S.C. § 1401(3)(A).
3. The Student does not have a learning disability, as shown by the comprehensive evaluation that the Board completed in reading, math, speech and language and occupational therapy. She does not meet the eligibility criteria for other health impaired. (Findings of Fact ## 10, 16).
4. The Parent does not challenge the PPT's denial of eligibility under a category of emotional disability.
5. Under the applicable provisions of state and federal law, a student who is exhibiting adequate or better educational performance without the provision of special education and related services should not be identified as a student with a disability under the IDEA. See *Student v. Darien Bd of Ed* (SEA CT 2007) ("each and every Board witness with whom A. has worked testified that A made considerable progress in gaining academic, social, independence, speech and other skills"). Here, a preponderance of the evidence shows the Student is making progress in her education; she is advancing from grade to grade, and her year-end grades from 6th grade show meaningful progress through the 6th grade curriculum. Testing did not reveal learning disabilities under the IDEA. As of the October 2022 PPT, which was in the beginning of 7th grade, teachers reported the ability to be successful in the classroom and no significant concerns regarding accessing the material. (Findings of Fact ## 2-16).
6. The Board has completed two comprehensive evaluations as a result of the Parental referral process under the IDEA in the last two years. The evaluations were comprehensive and conducted on appropriate timelines, with extensions granted by the Parent. (Findings of Fact ## 2-6). There is no evidence in the record which would have put the Board on notice that any additional evaluations pursuant to its Child Find duty were warranted. The Parent's argument focuses on a challenge to the outcome of the eligibility determination rather than the evaluative process required by Child Find. The Board thusly complied with Child Find.
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). 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).
9. 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).
 10. 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).
 11. 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).
 12. In compliance with the IDEA, evaluations of the Student were conducted by the school psychologist, speech and language pathologist and occupational therapist, who were appropriately certified, licensed, trained, and knowledgeable professionals. They 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 was eligible for special education services. They also received information from various sources including teachers who were familiar with the Student and the Parent. R.S.C.A. Sec 10-76-9(a) 34 C.F.R. §300.304(b)(4). (Findings of Fact ## 2-10.).
 13. The Board's evaluations were in compliance with 34 C.F.R. §300.301- 305 and R.C.S.A. Sec. 10-76d-9(a). (Id.).
 14. No single measure or assessment may be used as the sole criterion for determining eligibility for special education services. The Parent's concern that the Student performed poorly on a task which required reading an analog clock which was presented in the evaluation, and discrete learning gaps in geometry, does not indicate a need for special education.

ORDERS:

1. The Board's complied with its obligations under the IDEA for Child Find.
2. The Student is not eligible under the IDEA.