

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Hartford Board of Education v. Student¹

Appearing on behalf of Student:	Student's Mother, <i>Pro Se</i>
Appearing on behalf of the Board of Education:	Attorney Michelle Laubin Berchem Moses PC 75 Broad Street Milford, CT 06460
Appearing before:	Janis C. Jerman Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing was requested by Board of Education's (BOE's) Attorney via letter dated November 16, 2023. At the November 28, 2023 telephonic prehearing conference, Attorney Laubin appeared on behalf of BOE and no one appeared on behalf of Student. At the rescheduled December 6, 2023 prehearing conference, Attorney Laubin appeared on behalf of BOE and Student's Mother appeared on behalf of Student. The original 45-day deadline to mail the final decision and order was December 31, 2023. The following issues are identified:

1. Was the Board of Education's Initial Eligibility Evaluation of Student appropriate?
2. If the answer to Issue One above is in the negative, shall the Board of Education be required to fund an Independent Educational Evaluation of Student?

On December 8, 2023, BOE's Attorney requested a 30-day extension of the deadline to mail the final decision and order to accommodate a hearing on January 8, 2024 when the parties are mutually available. After fully considering the parties' positions, the request was granted and the deadline to mail the final decision and order extended 30 days to January 30, 2024.

Hearing convened via videoconference on January 8, 2024. BOE's Attorney offered 112 exhibits which were admitted absent objection and presented five witnesses who testified under oath. Student's Mother submitted four exhibits which were admitted absent objection and testified under oath.

On the record at the conclusion of the hearing, the parties orally requested an extension of the deadline to mail the final decision and order to allow time to review the evidence presented and for the Hearing Officer to prepare the final decision and order. The request was granted on the record and the deadline to mail the final decision and order extended to February 27, 2024.

To the extent that procedural history, statement of jurisdiction, findings of fact, or discussion represent conclusions of law, they should be so considered, and vice versa.

¹ To comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 USC § 1232g (FERPA) and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally identifiable information. The identity of these individuals is included in the detachable Appendix A for reference to authorized individuals.

Statement of Jurisdiction

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) § 10-76h and related regulations, 20 United States Code (USC) § 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (UAPA), CGS §§ 4-176e to 4-178, inclusive, and § 4-181a and § 4-186.

Findings of Relevant Fact²

1. Student resides in Hartford, Connecticut and is aged twelve years at the time of the hearing. (Exh. B-2).

Qualifications of BOE Staff that Testified

2. Magnet School Special Education Teacher holds a master's degree in teaching and is one class shy of completing a master's degree in special education. She holds a provisional certification in special education teaching from the State Department of Education (SDOE). She has conducted 30-40 student evaluations while employed by BOE. She also serves as BOE's compliance monitor and department chair at Upper Magnet School. (Exh. B-111; Testimony of Special Education Teacher)
3. School Psychologist C holds a master's degree in school psychology. She holds a certification in school psychology from SDOE. She has conducted between 1,500 and 2,000 standardized evaluations over her 29-year career and has interpreted psychology evaluations conducted by other professionals. The evaluations are used to identify cognitive IQ and discern learning disabilities, behavioral and emotional issues. She is a school psychologist at Upper Magnet School. (Exh. B-108; Testimony of School Psychologist C)
4. Upper Magnet School Occupational Therapist holds a master's degree in occupational therapy (OT) and is licensed as an occupational therapist by the State of Connecticut. Upper Magnet School Occupational Therapist observes and evaluates students based on concerns raised by parents and school personnel that may interfere with academic performance. She is trained to conduct assessments in the school setting and has conducted 75 OT assessments while employed by BOE. Upper Magnet School Occupational Therapist also provides direct OT services to students and consults with teachers to help students in the classroom. (Exh. B-112; Testimony of Upper Magnet School Occupational Therapist)
5. Upper Magnet School Social Worker holds a master's degree in social work, holds a certification from SDOE as a school social worker, and is licensed as a social worker by the State of Connecticut. School Social Worker provides individual and group sessions with students receiving special education and Section 504 services, conducts initial and triennial evaluations, and develops goals and objectives for Individualized Education Programs (IEPs). As there are no standardized assessments for social work evaluations, School Social Worker reviews student development histories to assess present levels of performance. School Social Worker is trained to do social development histories as part of a education evaluation. (Exh. B-109; Testimony of Upper Magnet School Social Worker)
6. Assistant Superintendent of Special Education and Pupil Services (Assistant Superintendent) holds a Master of Education in Educational Leadership and a Sixth Year degree in Administration. She is working towards a Doctorate degree. Assistant Superintendent holds the following certifications from SDOE: Superintendentcy-Administration 093,

² In the Discussion, Findings of Fact are cited as "FOF #."

Administration 092, Comprehensive Special Education Grades PreK-12 065, and Elementary Education Grades K-6 (013). She has worked for BOE as a special education teacher, and assistant principal, and has worked for other school districts and principal and director. Assistant Superintendent has evaluated students for eligibility for special education and oversees teams conducting evaluations and making eligibility determinations. She trains teachers and related services personnel on how to conduct evaluations. (Exh. B-110; Testimony of Assistant Superintendent)³

Kindergarten (2016-17 School Year)

7. Student's Mother requested an initial eligibility evaluation of Student in September 2016 when he was in kindergarten at Charter School. Student's Mother was concerned about behaviors that directly impacted Student's academic learning and social/emotional well-being in school. Student's Mother consented to school-recommended assessments. (Exh. B-2, B-3, B-4, B-6, B-11, B-43)
8. The speech and language evaluation indicated that Student had speech and language skills "well within the average range;" that he remained focused throughout the assessment and completed tasks easily with minimum urging; that his responses indicate age-appropriate performance on all speech and language tasks suggesting that "communication weaknesses are not impacting behavioral concerns in the classroom." (Exh. B-7)
9. Charter School Occupational Therapist conducted an OT evaluation which indicated that Student "presented with relative strengths in his motor abilities;" that non-motor factors such as impulsivity and not waiting for details or fully comprehending detailed instructions appear to impact his participation and performance in movement activities; that he needs to acquire some skills that can be done through consultation with the school occupational therapist; and that he will benefit from strategies to build his skillset for learning and participation in classroom routines. (Exh. B-8)
10. On the educational evaluation, Student scored high average in broad written language, average in broad reading, and low average in broad mathematics. Student was "very cooperative;" his activity level was typical for his age; he stayed in his seat the entire time; and "was a joy to work with." (Exh. B-10)
11. On the social/development history report, Charter School Social Worker noted that Student is able to stay on task and remain motivated when highly engaged and that he will walk around the classroom or leave if he is not interested in learning or become emotionally distraught; that he is kind, active and bright; and that he struggles with various social and behavioral challenges that impact his academic success. Charter School Social Worker recommended that Student receive one hour of social work/counseling services in the school setting. (Exh. B-11)
12. Student participated in one of two psychological evaluation sessions before Student's Mother withdrew Student from school in October 2016 to homeschool him. For the sections that Student did complete, he scored low average for verbal comprehension, high average for fluid reasoning composite, and average for processing speed. His full-scale IQ of 97 was in the average range. The evaluation report noted that, although Student apparently experienced some difficulty following rules in the classroom, "his behavior and cooperation during the testing session was adequate, appropriate, and in keeping with someone his age. Student's

³ Assistant Superintendent was present at the hearing as BOE's representative and heard the testimony of all other BOE witnesses prior to her testimony. Her testimony will be weighed accordingly.

departure prior to completing testing interrupted collection of data to allow focusing on classroom behavior, breaking testing standards.” (Exh. B-9, B-43, B-102)

13. The Planning and Placement Team (PPT) met on October 21, 2016 to review the evaluations. The PPT determined that Student was not eligible for special education services. The PPT recommended, and Student’s Mother consented to, additional evaluations: behavior rating scale, continuous performance task, and a Functional Behavior Assessment (FBA). In addition, the PPT stated that a safety plan will be developed for Student. Student’s Parents disagreed with the PPT recommendations. (Exh. B-12)
14. Student’s Mother enrolled Student in Elementary School in late October or November 2016. (Exh. B-14, B-102; Testimony of Student’s Mother)
15. School Psychologist A completed a psychological evaluation of Student in November 2016. The evaluation identified the presence of at-risk behaviors suggesting a need to rule out and monitor for depression and anxiety; that Student exhibits difficulty with change and becomes upset, frustrated, and angered; that his resulting outbursts, mood changes, and periods of emotional instability do not appear to be caused by a specific diagnosis but may reflect a personality style, a traumatic life event or inconsistent styles of behavior management in childrearing. (Exh. B-14)
16. The PPT met on December 6, 2016 to review the evaluation. After considering School Psychologist A’s evaluation and the classroom teacher’s report that Student was smart and sweet, transitioned to kindergarten with some adjustment issues, and that he was making progress, the PPT determined that Student was not eligible for special education services. (Exh. B-15, B-16, B-17)
17. On January 3, 2017, Student was diagnosed with Post Traumatic Stress Disorder (PTSD) following a private psychiatric evaluation. (Exh. B-18; Testimony of Student’s Mother)
18. The PPT met on February 1, 2017 upon Student’s Mother’s request and re-referral to special education. Student’s Mother was concerned about Student’s behaviors in school and impact on his learning. She disagreed with the previous determination that Student is ineligible for special education. After considering Student’s Mother’s concerns and the classroom teacher’s report, the PPT determined that Student was not eligible for special education services. Student’s Mother disagreed with the determination and requested an Independent Educational Evaluation (IEE) which the PPT granted. The PPT recommended, and Student’s Mother consented to, an OT screening and school-based FBA conducted by Creative Interventions. (Exh. B-19, B-20, B-21, B-22)

First Grade (2017-18 School Year)

19. Student transferred from Elementary School to Lower Magnet School to start first grade. Student had difficulty adhering to the academic schedule and school routines at Lower Magnet School. He engaged in disruptive behaviors and non-compliance with directions and was frequently inattentive or off-task. These behaviors impacted his academic performance. (Exh. B-29, B-102)
20. The FBA was conducted on September 20, 2017 utilizing the following assessment tools: school observations; functional assessment interview with special education teacher/case manager; questions about behavioral function with gym teacher, classroom teacher, and art teacher; record reviews; and anecdotal data from teachers. The assessment identified Student’s disruptive behaviors and their impact on his academic performance and made recommendations to address those issues in the school setting. (Exh. B-29)

21. Lower Magnet School Occupational Therapist conducted an OT screening of Student on November 17, 2017. The report noted that Student sits and attends longest during preferred activities and, even during preferred tasks, he can be impulsive and active. A full OT evaluation was recommended to determine if OT can assist classroom staff with facilitating Student's self-regulatory abilities. (Exh. B-30)

Second Grade (2018-19 School Year)

22. Student attended Lower Magnet School for second grade. (Exh. B-33, B-102)

Third Grade (2019-20 School Year)

23. Student attended Lower Magnet School for third grade. (Exh. B-42, B-102)
24. The PPT met on February 14, 2020 upon Student's Mother's request and re-referral to special education. The PPT recommended, and Student's Mother consented to, a full initial eligibility evaluation. (Exh. B-36, B-38, B-39, B-40)
25. Lower Magnet School Occupational Therapist⁴ conducted an OT evaluation of Student "secondary to concerns in the area of sensory processing" on March 30, 2020. Evaluation tools included Sensory Profile, teacher interview, and clinical observation. Lower Magnet School Occupational Therapist again noted that Student presents as cooperative but distractible, that he displays difficulties with sensory processing including seeking, sensitivity, avoiding and registering. Lower Magnet School Occupational Therapist offered OT consultation of one hour per month to help Student's education team facilitate Student's self-regulation skills. (Exh. B-41)
26. Student attended school virtually from March 2020 through the end of the school year due to the COVID-19 pandemic. (Exh. B-47)

Fourth Grade (2020-21 School Year)

27. Student attended Lower Magnet School for fourth grade. (Exh. B-43, B-45, B-46, B-102)
28. School Psychologist B completed a psychological evaluation of Student on September 16, 2020. The evaluation included the following tools: Vineland Adaptive Behavior Scales 3rd Ed. Teacher Rating Form (VABS-3 TRF), Social Responsiveness Scale 2nd Ed. (SRS-2), Childhood Autism Rating Scale 2nd Ed. (CARS-2), CARS-2 Questionnaire/ Interview for Parents of Caregivers, Behavior Assessment System for Children-3 (BASC3) Teacher Rating Scales (BASC3-TRS-C), BASC3 Parent Rating Scales (BASC3-PRS-C), Clinical Interview-Mental Status Exam (MSE), Focused Mental Health Observation (FMHO), Projective Drawing Battery, 3 Wishes, Review of available Cumulative Education Records, Review of Existing Evaluation Data (REED), school observation, teacher interview, parent interview, School Nurse Consultation (SPED Health Data Form), Wechsler Intelligence Scale for Children 5th Ed. (WISC-V), Rapid Automatic Naming Literacy WISC-V Ancillary (RAN-L), Test of Nonverbal Intelligence 4th Ed. (TONI IV), Special Education Consultation – Academic Skills Achievement Integrated Review of Score Profile, and VABS-3 Parent/Caregiver Rating Form (VABS-3 P/CG RF). School Psychologist B found Student to be a twice exceptional learner (2e) and intellectually gifted in visual-spatial reasoning. School Psychologist B's report considered and discussed impact of 2e learner and cultural, socio-economic, and enrichment environment factors in testing. The evaluation identified

⁴ This is the same occupational therapist that completed the 2017 OT screening. (Exh. B-30, B-41)

Student's academic and cognitive strengths as well as areas of inconsistency and impact of anxiety on his social-emotional behaviors. (Exh. B-43)

Fifth Grade (2021-22 School Year)

29. Student attended Lower Magnet School for fifth grade. (Exh. B-48, B-102)
30. Student's Pediatrician referred Student to Licensed Psychologist at Northeast Neuropsychology for a neurobehavioral evaluation which was conducted on November 22, 2021. The following tools were used in the assessment: A Neuropsychological Assessment 2nd Ed. (Inhibition, Word Generation); Beck Youth Inventory 2nd Ed., Children's Memory Scale (Stories); Conners Continuous Performance Test 3rd Ed. (CPT-3); Rey Complex Figure Test, Trail Making Test: Part A and B (Children's); Wechsler Abbreviated Scale of Intelligence 2nd Ed. (WASI-II); WISC-V (Coding, Digit Span); Wisconsin Card Sorting Test (WCST:64); BASC3-PRS; Behavior Rating Inventory of Executive Function 2nd Ed. (BRIEF-2) Parent Form; National Initiative for Children's Healthcare Quality Vanderbilt Assessment Scale (NICHQ: Parent Form); review of available medical records, and clinical interview with Student and Student's Mother. Standard administration was modified to include use of masks and safety partitions due to COVID-19 pandemic. The evaluator noted that there was no indication that performance was affected by those modifications and that it was possible to maintain standardized test procedures. The evaluation results found that neurocognitively, Student's performance across domains was largely intact with cognitive weaknesses in processing speed, visual attention, vigilance, and inhibitory control. These findings are consistent with previous evaluations conducted by BOE. Licensed Psychologist diagnosed Student with Attention Deficit/Hyperactivity Disorder (ADHD), Unspecified Depressive Disorder, and Specific Phobia: Situational (fear of the dark). (Exh. B-47)
31. Student graduated from Lower Magnet School. (Testimony of Student's Mother)

Sixth Grade (2022-23 School Year)

32. Student enrolled at Upper Magnet School to begin sixth grade. (Exh. B-52, B-58, B-66)
33. Upper Magnet School Social Worker did not provide direct services to Student. He met with Student a few times when social emotional concerns arose. He assisted Student in transitioning between classes as he became familiar with the new school and schedule. Sometimes, Student would get lost or not know where to go next and would sit in the hall and whine or cry. Upper Magnet School Social Worker walked with Student and helped regulate his emotions while walking to class. Upper Magnet School Social Worker did not see unsafe behaviors or behavioral concerns as indicated by Student's Mother. Upper Magnet School Social Worker noted that Student was performing well in class and that he sometimes required assistance but could get the work done with good accuracy. (Testimony of Upper Magnet School Social Worker)
34. The PPT met on September 14, 2022 upon Student's Mother's request and re-referral to special education. Student's Mother requested a therapeutic school setting for Student due to unsafe behaviors. At that time, Student was doing well in school and passing all of his classes. After considering Student's Mother's concerns, school counselor's reports, teachers' reports, Student's grades and 504 Plan, the PPT determined that, based on the data, an evaluation was not warranted at that time. (Exh. B-53; Testimony of Magnet School Special Education Teacher)

35. Student's Mother withdrew Student from Upper Magnet School to be homeschooled in October 2022. (Exh. B-102, B-106; Testimony of Student's Mother, Upper Magnet School Social Worker, Assistant Superintendent)
36. Student's Mother referred Student to Wheeler Clinic for an Autism Diagnostic Evaluation which was conducted on November 7 and 14, 2022. The evaluation included the following tools: intake interview with Student's Mother, History Form, Autism Diagnostic Observation Schedule 2nd Ed. Module 3 (ADOS-2), BASC3-PRS-C completed by Student's Mother and by Student's Father, BASC3 Self Report of Personality (BASC3-SRP), NEPSY 2nd Ed.: Affect Recognition & Theory of Mind subtests, SRS-2 completed by Student's Mother and by Student's Father, VABS-3 Domain Level Parent/Caregiver Rating form completed by Student's Mother, WISC-V, review of clinical records from Northeast Neuropsychology and two treating entities, review of educational records from Capitol Region Education Center, and review of medical records. Considerable portions of the Background Information section and some portions of the Behavior Assessment section of the report were redacted by Student's Mother prior to providing the report to BOE. The report concludes that Student "does not fulfill either main criteria and the diagnosis of Autism Spectrum Disorder is ruled out." (Exh. B-54; Testimony of Student's Mother, Assistant Superintendent)
37. Student's Mother continued to be concerned about Student's behavioral issues and the impact on academics. The PPT met on February 15, 2023 and agreed to conduct additional evaluations. Student's Mother consented to Fine Motor Control Assessment, Developmental Assessment, and Wechsler Individual Achievement Test 4th Ed. (WIAT-IV). (Exh. B-61, B-62, B-63, B-64, B-107; Testimony of Magnet School Special Education Teacher, School Psychologist C, Upper Magnet School Occupational Therapist, Assistant Superintendent, Student's Mother)
38. The PPT initially recommended an Intellectual/Cognitive Functioning Assessment. School Psychologist C reviewed the November 2022 Wheeler Clinic evaluation and felt there was no need for additional Intellectual/Cognitive testing since Student had just undergone testing and since the Wheeler results were very consistent with previous testing. Evaluations are considered valid for three years. Intelligence is stable over time unless there is a medical occurrence such as a brain injury. Student's Mother consented to not conducting additional Intellectual/Cognitive Functioning testing. (Exh. B-63, B-107; Testimony of School Psychologist C, Assistant Superintendent, Student's Mother)
39. Student transitioned from homeschooling back to Upper Magnet School in February 2023. He was back in school approximately one month when the evaluation took place. Student had a little difficulty adjusting to return to school and became more acclimated each day. (Exh. B-102; Testimony of Magnet School Special Education Teacher, Upper Magnet School Social Worker, Assistant Superintendent, Student's Mother).
40. Magnet School Special Education Teacher administered the WIAT-IV to Student over several days in March 2023. Student's scores were in the Low Average range on Reading and Written Expression sections; and Average in Mathematics, Math Fluency, and Oral Language. Student's low spelling score lowered the Written Expression composite score to the Low Average range. Student's lower scores could be impacted by being out of school for several months. During the evaluation, Student was pleasant, friendly, and a little fidgety. He "definitely tried and made a lot of effort." Student was occasionally distracted during the

evaluation and was given a fidget toy and breaks. (Exh. B-55; Testimony of Magnet School Special Education Teacher)

41. Upper Magnet School Occupational Therapist conducted an OT evaluation of Student on March 23, 2023. She administered the Developmental Test of Visual Perception 3rd Ed. (DTVP-3), observed Student, and met with the interdisciplinary team. All of Student's subtest and composite scores on the DTVP-3 were in the Average range and he demonstrated no difficulties during the assessment. He displayed some fidgeting and was easily redirected back to the task. Upper Magnet School Occupational Therapist reviewed Student's September 2016 OT evaluation report and did not see in this current evaluation any of the concerns raised in 2016. The current 2023 evaluation did not identify any concerns that required further evaluation. (Exh. B-8, B-66; Testimony of Upper Magnet School Occupational Therapist)
42. On March 24, 2023, School Psychologist C conducted a Psychological Evaluation of Student. The evaluation consisted of BASC3-TRS, BASC3-PRS, BASC3-SRP, Incomplete Sentences Assessment, Three Wishes Assessment, clinical interview, and review of cumulative records. School Psychologist C noted that Student "has been evaluated 4 times with consistent cognitive scores falling mostly in the Average range." These evaluations were administered by different professionals in different settings. Student was earning mostly A's in class, including in Honors Math class. Teacher reports indicate no concerns about Student's ability to participate in the general education curriculum. Student demonstrated no social emotional irregularity during the assessment. (Exh. B-67; Testimony of School Psychologist C)
43. Upper Magnet School Social Worker met with Student's Mother in April 2023 to conduct a Developmental History assessment. Student's Mother refused to complete the assessment despite previously consenting to the assessment. She declined to answer questions about Student's past because she previously answered questions and thought it was in Student's file. Upper Magnet School Social Worker explained why it was important to update the information, but Student's Mother was adamant that she did not want to answer and did not want social work services for Student. Upper Magnet School Social Worker did not identify any behavioral concerns that put Student or others at risk at that time. Nor did he see social emotional concerns with Student on a regular basis. Upper Magnet School Social Worker observed Student in the classroom and saw that he was able to complete grade-level work with minimal help. (Exh. B-68; Testimony of Upper Magnet School Social Worker)
44. The evaluations conducted by BOE were the most recent versions available at the time; were normed and standardized on the population of students in Student's age and grade range; were validated for the purposes used for; are comprehensive tests of student achievement across a broad range of areas; Evaluators followed the protocols established by the test publishers. BOE evaluators had no concerns about any areas of suspected disability that were not explored. (Testimony of Magnet School Special Education Teacher, School Psychologist C, Upper Magnet School Occupational Therapist, Assistant Superintendent)
45. On August 16, 2023, Student's Mother requested an IEE. (Exh. B-76, S-1, S-2; Testimony of Assistant Superintendent)
46. On September 6, 2023, BOE denied Student's Mother's request for an IEE and, after attempting to mediate the matter, filed for a Due Process Hearing to defend their evaluations on November 16, 2023. (Exh. B-87, B-96, S-3; Testimony of Assistant Superintendent)

Conclusions of Law

1. A parent has the right to an IEE at public expense if the parent disagrees with the board of education's evaluation. Individuals with Disabilities Education Act (IDEA), 20 USC § 1415(b); 34 Code of Federal Regulations (CFR) 300.502(b)(1); Connecticut State Regulations (Conn. Regs.) § 10-76d-9.
2. If a parent requests an IEE at public expense, the board of education must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense. 34 CFR § 300.502(b)(2); Conn. Regs. § 10-76d-9.
3. In conducting the evaluation, the board of education must:
 - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent;
 - b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 CFR § 300.304(b).
4. Each board of education must ensure that:
 - a. Assessments and other evaluation materials used to assess a child under this part (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) are used for the purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of the assessments.
 - b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 - c. Assessments are 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).
 - d. The child is 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;
 - e. In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

- f. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. 34 CFR § 300.304(c).
5. BOE has the burden of proving the appropriateness of its evaluation by a preponderance of the evidence. Conn. Regs. § 10-76h-14.
6. If the board of education requests a due process hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. 34 CFR § 300.502(b)(3); Conn. Regs. § 10-76d-9.

Discussion

BOE argues that Student was referred for a special education evaluation in February 2023; that he was previously evaluated in 2016, 2017, 2020, 2021, and 2022 by school-based and private evaluators; that these repeated psychology and related assessments indicate that Student has average cognitive ability with some strengths and weaknesses; that Student experiences social emotional dysregulation; that BOE agreed to re-evaluate Student in 2023; that BOE determined the appropriate assessments with Student's Mother and counsel; that BOE conducted the evaluations consented to by Student's Mother and considered previous assessments and information in Student's record; that BOE's 2023 evaluations were appropriate and thorough and met the requirements of the IDEA; that Student's Mother requested an IEE without identifying any issues regarding the validity of the evaluations; that Student's Mother has not disagreed with the results of the evaluation but disagrees with BOE's eligibility determination; and that BOE declined to fund an IEE and filed for a due process hearing to defend the appropriateness of the evaluation.

Student's Mother argues that Student has emotional behavior problems that impact his academic performance and needs special education services and a therapeutic school placement; that people who know Student outside of school and know him the best say that he has problems but BOE says otherwise; that school personnel do not see in Student what Student's Mother sees in him; that a two-hour evaluation while masked is not enough to evaluate Student's needs; that she questions whether BOE is truthful and is basing Student's services on his needs as opposed to personal issues; and that she wants Student to get an adequate education and be treated fairly.

Student's Mother did not identify any evaluation with which she disagreed or thought to be invalid. She generally questioned whether enough evaluations were conducted and disagrees with BOE's determination that, based on the evaluations, Student is not eligible for special education and related services. Eligibility is not at issue in this case. This case is limited to whether BOE's 2023 evaluations of Student were appropriate under the IDEA.

Student has undergone extensive testing between kindergarten and sixth grade, including OT, educational, psychological, social work, and autism spectrum evaluations and an FBA. Numerous evaluations were conducted over several years by different personnel – both from multiple BOE and private providers – with similar results. Each of the evaluations identified Student's behaviors that negatively impact his academic performance, including some behaviors consistent with Student's Mother's concerns. The evaluations also identify Student's intellectual and cognitive strengths and weaknesses which are consistent with teacher observations and grade reports. *See*, FOF-9, 10, 11, 12, 15, 20, 21, 25, 28, 30, 36, 40, 41, 42, 43.

BOE personnel who conducted the evaluations credibly testified about the process and results. There is credible evidence in the record to find that BOE used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information

about Student, including information provided by Student's Mother; did not use any single measure or assessment as the sole criterion for determining whether Student is a child with a disability; and used technically sound instruments that assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. There is credible evidence in the record to find that BOE's evaluations were the most recent versions available at the time; were normed and standardized on the population of students in Student's age and grade range; were validated for the purposes used for; are comprehensive tests of student achievement across a broad range of areas; and that the evaluators followed the protocols established by the test publishers and had no concerns about any areas of suspected disability that were not explored. *See*, FOF-44.

Student's Mother's disagreement with the application of those evaluations to the eligibility determination does not render the evaluations inappropriate or invalid.

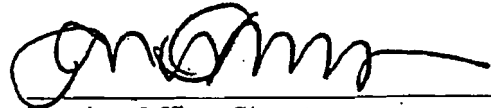
BOE has met their burden of proving by a preponderance of the evidence that the initial eligibility evaluation of Student was appropriate.

FINAL DECISION AND ORDERS

The Board of Education's Initial Eligibility Evaluation of Student was appropriate. The Board of Education is not required to fund an Independent Educational Evaluation of Student.

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

JANIS C. JERMAN

Hearing Officer

Name in Print