

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v Vernon Board of Education¹

Appearing on behalf of Student: Student's Mother, *Pro Se*

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

Appearing before: Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

Procedural Posture

A special education hearing was requested in Case 24-0355 by Student's Mother via undated letter (Exh. HO-1) and in Case 24-0363 by Board of Education (BOE) via undated letter (Exh. HO-2). Both cases were assigned to this Hearing Officer. BOE's Attorney requested that the cases be consolidated. Student's Mother did not object. Pursuant to Conn. Regs. § 10-76h-8(f)(3), the cases were consolidated for hearing to avoid unnecessary costs or delay.

At the consolidated February 16, 2024² prehearing conference noticed in both cases, Student's Mother appeared on behalf of Student and Attorney Chinni appeared on behalf BOE. BOE received Student's Request for Hearing on February 2; Student's Mother received BOE's Request for Hearing on February 6. The 30-day resolution period ended March 3 and the original 45-day deadline for mailing the final decision and order was April 17.

On February 16, BOE's Attorney filed a Motion to Dismiss all claims occurring on or before March 2, 2023; all claims concerning an independent educational evaluation (IEE) conducted as agreed to in the settlement agreement; and all claims concerning a current IEE request. Student's Mother filed an Opposition to Motion to Dismiss. After fully considering the parties' positions, the motion was granted in part and denied in part.

The issues for hearing were set as follows:

1. Was the Board of Education's evaluation of Student – consisting of a May 2023 neuropsychological evaluation, a November 2023 occupational therapy evaluation and a January 2024 psychological/cognitive evaluation - 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?
3. Did the Board of Education offer Student a free appropriate public education from March 3, 2023 to the end of the 2023-24 school year?

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.

² All dates are 2024 unless otherwise indicated.

4. If the answer to Issue Three is in the negative, what shall be the remedy?

Student's Mother filed a Motion for Copies and Inspection of Evidence and was given an opportunity to file an offer of proof as to the requested documents. After fully considering the parties' positions, the motion was granted in part and denied in part.

Hearings were scheduled for March 18 and March 19. On March 13, BOE's Attorney filed a Motion to Cancel Hearing Dates on the basis that Student's Mother disclosed certain exhibits less than five business days prior to the hearing, that Student's Mother did not comply with Conn. Regs. § 10-76h-12(d) in numbering and identifying her exhibits, and that Student's Mother did not provide hard copies of her exhibits. The motion was denied.

Hearing was held on March 18. On the record at the March 18 hearing, BOE's Attorney requested postponement of the scheduled March 19 hearing and a 30-day extension of the deadline to mail the final decision and order to accommodate hearings in April. Student's Mother objected to the requests. After fully considering the parties' positions, the requests were granted on the record. The deadline to mail the final decision and order was extended 30 days to May 17 and hearings were scheduled for April 18 and April 22.

Hearings were held on April 18 and April 22. Over the course of the three hearing dates, BOE's Attorney made an opening statement, offered exhibits, and presented five witnesses that testified and were cross-examined under oath; Student's Mother made an opening statement, offered exhibits, and presented ten witnesses that testified and were cross-examined under oath. Both parties made oral closing arguments at the conclusion of all testimony.

Witnesses were sequestered and instructed to not discuss their testimony with anyone during the pendency of the hearing.

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.

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 Fact³

Qualifications of BOE Staff who Testified

1. Special Education Supervisor (SpecEd Supervisor) has served in that role for BOE's elementary schools (pre-K through grade 5) for eight years. She previously held positions as a special education teacher and an assistant principal. She holds a master's degree in special education and sixth year degree in administration. She has been involved with Student's case, including attending his Planning and Placement Team (PPT) meetings, since he entered the district in March 2023. (Testimony of SpedEd Supervisor)
2. Special Education Teacher (SpecEd Teacher) holds a master's degree in special education and is a certified special education teacher. She has worked for BOE for nine months and has been Student's teacher and case manager in the Activity Based Learning program (ABL)

³ In the Discussion, Findings of Fact are cited as "FOF #."

since June 2023. SpecEd Teacher has ten years' experience in special education. (Testimony of SpecEd Teacher)

3. School Psychologist holds a bachelor's degree in psychology and linguistics and a master's degree and sixth year degree in school psychology. She has worked as a school psychologist since December 2021. She is certified to cover students aged three to twenty-one. School Psychologist began working at BOE's Elementary School in April 2023. She had previous experience working in other settings with K-5 and post-secondary students. She is qualified to conduct psychoeducational evaluations and has completed 40-60 evaluations of elementary school students and estimates that 5-10 of those were with students that are nonverbal. School Psychologist has evaluated Student and does not provide direct services to him under an individualized education program (IEP). The PPT, including Student's Mother, did not request direct services from School Psychologist. (Testimony of School Psychologist)
4. Occupational Therapist holds a bachelor's degree in exercise science and a master's degree in occupational therapy (OT). She began working for BOE in December 2022. She previously worked in an outpatient pediatric clinic and birth-to-three program. She is a licensed and board-certified occupational therapist. (Testimony of Occupational Therapist)
5. Speech Language Pathologist holds a bachelor's degree in communication sciences and disorders with a minor in special education and a master's degree in speech and language pathology. She has been employed as a speech language pathologist for BOE for two years and has three additional years of experience in a charter school at the elementary school level. Speech Language Pathologist began working with Student in March 2023 in the alternative program and continues to work with him. (Testimony of Speech Language Pathologist)
6. Art Teacher holds a bachelor's degree in art education and a master's degree in curriculum and instruction. She has worked as an art teacher for BOE for ten years. Art Teacher began working with Student when he enrolled in BOE's elementary school in March 2023. She participates in Student's PPT meetings as his general education teacher. She conducts Student's art education in the alternative program classroom. (Exh. B-5, B-18, S-6; Testimony of Art Teacher)
7. Board Certified Behavior Analyst (BCBA) holds a master's degree in applied behavior analysis and autism. He has worked in the field of applied behavior analysis with students with autism since 2011. BCBA consults with BOE special education teams to develop behavior plans and strategies for students and provides direct services to students. BCBA first worked with Student in preschool in 2020. He has attended Student's PPT meetings during the 2023-24 school year. (Testimony of BCBA)
8. Physical Therapist holds a master's degree in physical therapy and has been employed by BOE as a physical therapist since 2006. Physical Therapist assesses students who have difficulty accessing the school environment. She evaluates their gross motor skills, looking at their ability to move on/off the bus, manager school belongings, how they access the playground and go up/down stairs. She has worked with both special education and regular education students throughout her tenure. She has experience working with and evaluating children with autism. (Testimony of Physical Therapist)

Student's Educational History Since March 2, 2023

9. Student is diagnosed with autism spectrum disorder and is identified as a child with a disability eligible for special education and related services within BOE's district. Student

was receiving services in a private clinical setting and not attending BOE schools prior to March 3, 2023. (Exh. S-4; Testimony of SpecEd Supervisor)

10. Student is primarily nonverbal. He tries to use words and body language to the best of his ability to communicate. Student understandably gets frustrated when he can't express himself. (Testimony of Student's Father)
11. The PPT met on March 2, 2023 to conduct Student's annual review. Student's Mother attended the PPT with an attorney. The PPT developed an IEP based on the information available at that time, including input from Student's Mother and reports and evaluations conducted in Student's previous private clinical settings since he had not yet attended BOE's Elementary School. The IEP included goals and objectives for reading, math, communication, behavior, and social/emotional in an alternative program at BOE's Elementary School. The IEP also included direct speech and language services for 20 minutes once a week in a small group and three times a week for individual instruction; at least 60 minutes of physical therapy consultation/observation in the areas of gross motor skills and Student's ability to access the school environment between March 3 and April 6, 2023; at least 60 minutes of OT consultation/observation in the areas of fine motor and sensory processing skills across different school environments and activities between March 3 and April 6, 2023; BCBA consult for 30 minutes per month; speech language consult 20 minutes per week; one-to-one paraprofessional for instructional/behavioral support; special transportation; and extended school year (ESY) services. (Exh. S-5; SpecEd Supervisor)
12. Student's Mother wanted Student's IEP to be implemented as soon as possible. The PPT agreed that Student's IEP will be implemented beginning the following day. Student's Mother waived the ten-day notice requirement for implementation of the IEP. (Exh. S-5; SpecEd Supervisor)
13. Student began attending the alternative program in BOE's Elementary School on March 3, 2023. (Testimony of SpecEd Teacher)
14. BOE provided Student with an Augmentative and Alternative Communication (AAC) device for use in school and at home and trained Student's Mother on using the device. Student accessed the device accurately and independently at school to make preferred requests and when modeled and prompted by staff. Staff support faded over time because Student doesn't need it as much in 2024 as when he enrolled in March 2023. (Testimony of Speech Language Pathologist)
15. In April 2023, Student's Mother observed Student at school. Following the observation, Speech Language Pathologist met with Student's Mother to show her the AAC device and its functionality. She conducted general training on the device and answered Student's Mother's questions. (Testimony of Speech Language Pathologist)
16. Student did not use the AAC device appropriately at home and ceased bringing it home in February 2024. (Testimony of Student's Father)
17. As part of a mediated settlement agreement, the parties mutually agreed that BOE would retain Dr. Ellen Preen of Farmington Valley Neuropsychology Associates to conduct a neuropsychological evaluation of Student. (Exh. B-1; Testimony of Special Ed Supervisor)
18. Dr. Preen conducted the evaluation on May 30, and June 5, 2023. The May 30, 2023 session with Student's Parents lasted approximately one hour. The June 5, 2023 session was school based. The evaluation consisted of diagnostic interview, neuropsychology intake form, clinical observations, record review, Behavior Rating Inventory of Executive Function – 2nd Ed. (BRIEF-2), Achenbach Child Behavior Checklist (CBCL), Vineland Adaptive Behavior

Scales 3rd Ed. Comprehensive Parent and Teacher Forms (Vineland-3). (Exh. B-2, S-9; Testimony of Student's Father)

19. Dr. Preen opined that from a neuropsychological perspective, the evaluation supports the diagnosis of Autism Spectrum Disorder with Accompanying Intellectual and Language Impairment Requiring Very Substantial Support. She made numerous specific recommendations to address education and academic accommodations, learning, emotional and behavioral functioning, attention regulation, impulse control, transitions, social skills, visual processing, and adaptive functioning. (Exh. B-2, S-9)
20. Progress reports are based on durational or frequency data represented as percentages to indicate progress on goals and objectives. Data is collected during program work and classroom observation. Progress reports include both the percentages and written descriptions of Student's progress towards goals and objectives. (Testimony of SpecEd Teacher, Speech Language Pathologist)
21. Student's progress report indicates that he made satisfactory progress in most of his IEP goals and objectives between March and June 2023 when he was three months into the one year duration of his IEP. (Exh. B-3; Testimony of SpecEd Teacher, SpecEd Supervisor, Speech Language Pathologist)
22. The PPT met on September 22, 2023 to review Dr. Preen's evaluation. Student's Mother attended the PPT with an attorney. Dr. Preen was not present.⁴ The PPT added a social/emotional/behavioral goal and an executive functioning goal to Student's IEP based on data gathered since Student began attending the alternative program, his progress on goals and objectives, and findings from Dr. Preen's evaluation. The PPT agreed to conduct additional targeted assessments consisting of individually administered standardized academic assessment, Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP), non-classroom observation by School Psychologist, Functional Behavioral Assessment (FBA), gross motor development assessment, and fine motor development assessment. Student's Mother consented to the targeted assessments. (Exh. B-5, B-6; Testimony of SpecEd Teacher, SpecEd Supervisor⁵, Occupational Therapist, Speech Language Pathologist)
23. Speech Language Pathologist did not recommend a speech and language evaluation at that time because she had no questions on how to appropriately program for Student's school needs. She had gotten to know Student and learn his strengths, weaknesses, and preferences and how he responds to instruction. Student was making appropriate progress given his IEP goals and objectives and supports. Student's Mother did not ask for a speech and language evaluation at the PPT meeting. (Exh. B-5; Testimony of Speech Language Pathologist)
24. Physical Therapist conducted a gross motor assessment of Student in fall 2023 to assess his ability to access the school environment. She observed Student throughout his school day, including how he moves around the classroom, hallways, and playground. After completing her observations, Physical Therapist thought that she had an accurate picture of Student's needs and abilities and did not need additional information to make recommendations for Student. She discussed her recommendations with Student's educational team. Some of Physical Therapist's recommendations were general recommendations for all students and others were specific to Student's needs and abilities. None of the recommendations required

⁴ BOE's Attorney stipulated that BOE did not invite Dr. Preen to the PPT meeting and that she was not present.

⁵ SpecEd Supervisor attended the IEP. Due to a clerical error, she is not on the attendance list. (Testimony of SpecEd Supervisor)

Student to have direct physical therapy services. No member of the PPT, including Student's Mother or her counsel, requested that Student have direct physical therapy services. (Exh. B-7; Testimony of Physical Therapist)

25. Occupational Therapist conducted an evaluation to assess Student's fine motor, visual perceptual, and adaptive skill set. She conducted the evaluation on October 10, October 25, and November 8, 2023. The evaluation consisted of the Schoodles School Fine Motor Assessment and clinical observations. Schoodles is a qualitative performance-based assessment that gives the best snapshot of Student's fine motor skills relative to school performance. The assessment allows for prompts and modeling. The assessment identified Student's struggles in visual skills, core strength, and upper extremity strength. Occupational Therapist recommended and provided direct OT services of 120 minutes per month and indirect OT consult 15 minutes per month. Occupational Therapist often provides more than 15 minutes of OT consult per month for Student's providers. Occupational Therapist looked at Student's performance in the school setting and found that most of his vocalizations were when he was excited or doing movements and were not sensory concerns that impact his ability to learn. (Exh. B-8, S-7; Testimony of Occupational Therapist)
26. The PPT met on November 30, 2023 to discuss Student's transportation for safety reasons. Student's Parents requested that a bus monitor be assigned to the bus instead of using a buckle clip or harness for Student. BOE assigned a bus monitor. ((Exh. B-13, B-14; Testimony of SpecEd Teacher, SpecEd Supervisor, Student's Father, Elementary School Principal)
27. Although not normally done at a transportation PPT meeting, the PPT also discussed the Least Restrictive Environment (LRE) checklist at Student's Mother's request. Student has no scheduled time in his school day with non-disabled peers. Student's Mother requested a cognitive assessment of Student by School Psychologist. No other member of the PPT thought that an additional cognitive assessment was necessary. (Exh. B-13, B-14; Testimony of SpecEd Teacher, SpecEd Supervisor, School Psychologist)
28. SpecEd Teacher conducted an educational evaluation of Student in November and December 2023 to "gain a more nuanced and comprehensive understanding of [Student's] skills, abilities, ad areas for growth within specific areas of academic understanding." SpecEd Teacher administered the Assessment of Basic Language and Learning Skills Revised Achievement Evaluation (ABLRS-R), a criterion-referenced assessment, and observed Student in the alternative program classroom during morning meeting and math. SpecEd Teacher considered other assessments then selected the ABLRS-R because it has flexibility with response times and allows for repetition of prompts. As a less restrictive assessment, she felt that the ABLRS-R would give more accurate information about Student's abilities in academics and instructional tasks. SpecEd Teacher compared Student's performance on the assessment to his performance in the classroom and found that they matched. She is confident that the assessment results were accurate. (Exh. B-9, S-8; Testimony of SpecEd Teacher)
29. BCBA administered the VB-MAPP in December 2023 "during the regular school day on several occasions and across several days." Student was assessed based on direct observation, direct testing, and review of educational records. SpecEd Teacher provided information to BCBA as part of the assessment. BCBA communicated with Student's Mother regarding Student's behaviors. (Exh. B-10; Testimony of SpecEd Teacher, BCBA)

30. BCBA conducted an FBA in December 2023 to determine what triggers and reinforces challenging behaviors that impede Student's academic and social development to assist in developing interventions to decrease unwanted behaviors and teach adaptive, replacement skills. Assessment tools include interviewing SpecEd Teacher, Student's paraprofessional, and Speech Language Pathologist; record review; and direct observations of Student in both academic and non-academic settings over a two-week period. The FBA identified that removed direct adult attention was the primary antecedent to targeted behavior of elopement and personal space intrusion.⁶ Shared direct adult attention and transitions between physical spaces and activities were also notable antecedents. (Exh. B-11; Testimony of BCBA)
31. The FBA showed that Student was having physical conflicts with other students, not tolerating sharing certain toys or objects, and not engaging with other students in an age-appropriate manner. Student's behavior was motivated by other students having access to things that Student wanted and him looking for attention or feedback. (Testimony of BCBA)
32. In December 2023, BCBA developed a Behavior Support Plan (BSP) based on the results of the FBA. The BSP identifies six behavioral objectives; methods of data collection and analysis; proactive procedures; reactive strategies; training and consultation from BCBA; and evaluation process. SpecEd Teacher reviewed the BSP and consulted with BCBA about how to implement it in the classroom. (Exh. B-12; Testimony of SpecEd Teacher, BCBA)
33. BCBA works directly with Student in addition to consulting with paraprofessional and classroom staff for at least 30 minutes per month. (Exh. B-18, S-6; Testimony of BCBA)
34. Paraeducator is assigned to work with Student in the alternative program classroom and in his physical education and music classes. Throughout the school day, she tracks data for Student's BSP. (Testimony of Paraeducator)
35. The PPT met on December 12, 2023 to review the targeted assessments after which they updated a social emotional goal on the IEP. Although the other members of the PPT did not think it was necessary for Student's educational planning, at Student's Mother's request, the PPT agreed to conduct an individually administered standardized assessment to assess Student's current level of functioning. (Exh. B-15, B-18, S-6; Testimony of SpecEd Teacher, SpecEd Supervisor, School Psychologist, Occupational Therapist)
36. School Psychologist conducted the targeted assessment on December 21, 2023 and January 2, 2024. The assessment consisted of file review and administration of the Wechsler Intelligence Scale for Children 5th Ed. (WISC-V) Nonverbal Index. School Psychologist selected the nonverbal index because Student is a mostly nonverbal communicator. The WISC-V is a standardized nationally normed assessment. Student had no problem transitioning between the classroom and School Psychologist's office, was "very happy" during the evaluation sessions, and took a short break during each session. Student's overall abilities were measured in the far below average range, which was consistent with Dr. Preen's evaluation results. (Exh. B-16, S-11; Testimony of School Psychologist)
37. Student's progress report for the period from the start of the 2023-24 school year to December 2023 indicates that he mastered two objectives and made satisfactory progress on the remaining objectives except for one objective that was recently added and not yet introduced to him. (Exh. B-17; Testimony of SpecEd Teacher, SpecEd Supervisor, Speech Language Pathologist)

⁶ Student's Mother requested use of the term "personal space intrusion" instead of the previously-used term "aggression." (Testimony of BCBA)

38. The PPT met on January 31, 2024 to review the targeted cognitive assessment conducted by School Psychologist. The PPT determined that no changes to the IEP were warranted at that time. Student's Mother did not disagree with the evaluation or request any changes to Student's IEP at that time. (Exh. B-19; Testimony of SpecEd Teacher, SpecEd Supervisor, School Psychologist)
39. The PPT met on February 29, 2024 for Student's annual review. At Student's Mother's request, the meeting was adjourned prior to completing the annual review. (Testimony of SpecEd Supervisor, Occupational Therapist)
40. Student's Mother observed Student in his alternative program classroom and in speech language therapy sessions multiple times between April 2023 and February 2024. Following the speech language therapy observations, Speech Language Pathologist met with Student's Mother for an hour to show her videos on modeling and activities to engage Student with the AAC device. She also provided Student's Mother with links to videos that Student likes to watch and gave her an adaptive story book. (Exh. S-31, B-21; Testimony of Elementary School Principal; Speech Language Pathologist)
41. Student's IEP calls for Student to receive direct speech and language services four times per week for 20 minutes. Three of the four sessions are individual services and one is in a group setting. That level of direct service has remained consistent since March 2023. (Testimony of Speech Language Pathologist)
42. BOE staff communicates with Student's Mother via written notes sent home with Student, email, a communication portal, and in-person. (Testimony of SpecEd Teacher, Speech Language Pathologist, Student's Father)
43. BOE convened six PPT meetings for Student between March 2023 and February 2024. It is unusual for BOE to have that many PPT meetings for a Student in a year. (Exh. B-5, B-13, B-18, S-5, S-6; Testimony of SpecEd Supervisor)
44. SpecEd Teacher believes that Student's IEPs, goals and objectives, and placement in the alternative program are appropriate given his deficits and inability to attend and to consistently vocalize his wants. (Testimony of SpecEd Teacher)
45. On February 2, 2024, Student's Mother requested an IEE in the areas of neuropsychology/psychoeducation and a psychological evaluation. BOE denied the request on February 5, 2024 and filed for a due process hearing to defend their evaluations on February 6, 2024. (Exh. S-17, HO-1)

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.
- 7. A Hearing Officer appointed under 34 CFR § 300.500 *et seq.* and Connecticut State Agency Regulations ("Conn.Regs.") § 10-76h-1 *et seq.* has the authority (A) to confirm, modify, or reject the identification, evaluation or educational placement of or the provision of a free appropriate public education ("FAPE") to the child or pupil, (B) to determine the appropriateness of an educational placement where the parent or guardian of a child requiring special education has placed the child or pupil in a program other than that prescribed by the

PPT, or (C) to prescribe alternate special educational programs for the child. CGS § 10-76h(d)(1).

8. BOE has the burden of proving the appropriateness of a student's program or placement by a preponderance of the evidence. Conn.Regs. § 10-76h-14.
9. The FAPE mandated by federal law must include special education and related services tailored to meet the unique needs of a particular child, 20 USC § 1401(a)(18), and be "reasonably calculated to enable the child to receive educational benefits." Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 207.
10. BOE must offer an eligible student an IEP that is reasonably calculated to enable the child to make progress appropriate in light of their circumstances and such progress must be "markedly" more than *de minimus*. A child's IEP need not aim for grade-level advancement if that is not a reasonable prospect for that child but every child should have the chance to meet challenging goals and objectives. The instruction must be specially designed to meet the child's unique needs. Andrew F. ex rel. Joseph F. v. Douglas County School Dist., 580 U.S. 386 (2017).
11. "The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials... [Rowley, at 207]. The [IDEA] contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians." [Rowley, at 208-09]. Andrew F. ex rel. Joseph F. v. Douglas County School Dist., 580 U.S. 386 (2017).
12. Each IEP must include: (a) a statement of the student's present level of performance in each area of disability as determined through periodic assessments; (b) a statement of measurable annual goals, including academic and functional goals, that are designed to meet each of the student's educational needs resulting from the disability; (c) a statement of the special education and related services to be provided in order to enable the student to attain his or her goals and to progress in the general education curriculum; and (d) a statement of the special education and related services and supplementary aids and services, to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; and to be involved in and make progress in the general education curriculum; and (e) an explanation of the extent, if any, to which the child will not participate with nondisabled children; and (f) a statement of any individual appropriate accommodations necessary to measure academic achievement and functional performance of the student on state and district-wide assessments. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.

Discussion

BOE argues that they have done everything possible for Student that they are required to do to provide him FAPE; that they scheduled a PPT the day after the mediated settlement agreement and implemented the IEP the following day when Student began attending the alternative program; that they convened many PPTs in the year since Student enrolled; that Student's IEP goals and objectives are appropriate and measurable; that Student's IEP is reasonably calculated to provide him access to a meaningful educational benefit; that Student made substantial progress during the year; that Student's Mother was provided meaningful participation in Student's educational program; that the Request for Hearing does not allege procedural violations; and that they completed all agreed upon evaluations, including the IEE

that was a result of the March 2023 settlement agreement; that each evaluation used up to date instruments, was administered by providers certified to do so, and was comprehensive and valid; that the cognitive evaluation was done solely as an accommodation to Student's Mother; and that Student has, and continues to, receive FAPE.

Student's Mother argues that every child should have a chance to meet challenging educational objectives; that Student's goals and objectives have not changed over the course of the year that he has attended BOE schools and that demonstrates lack of progress; that his IEP is not in compliance with IDEA requirements, does not contain measurable goals, is ambiguous, in shambles, and not tailored to allow him to progress; that Student does not receive direct services to support him; that Student is entitled to more than *de minimus* progress; that there is not a single area where Student exceeds grade level; that Student is not in the least restrictive environment; that BOE impeded Student's Parent's participation in Student's IEP; that BOE's evaluations, including the IEE, were not comprehensive or representative of Student's strengths and weaknesses; and that, even if the evaluations are found to be valid and reliable, the recommendations were not appropriately implemented.

1. Was the Board of Education's evaluation of Student – consisting of a May 2023 neuropsychological evaluation, a November 2023 occupational therapy evaluation and a January 2024 psychological/cognitive evaluation - appropriate?

A. May 2023 Neuropsychological Evaluation

Dr. Preen's neuropsychological evaluation of Student consisted of diagnostic interview, neuropsychology intake form, clinical observations, record review, BRIEF-2, CBCL, and Vineland-3. She obtained information from Student's Parents and BOE staff in addition to observing Student and administering standardized assessments. (FOF 18, 19)

Dr. Preen's 44-page report identifies the tests and procedures utilized in the evaluation, behavioral observations, test results with analysis, diagnostic impressions, and recommendations. She opined that from a neuropsychological perspective, the evaluation supports the diagnosis of Autism Spectrum Disorder with Accompanying Intellectual and Language Impairment Requiring Very Substantial Support. She made numerous specific recommendations to address education and academic accommodations, learning, emotional and behavioral functioning, attention regulation, impulse control, transitions, social skills, visual processing, and adaptive functioning. (FOF 18, 19)

Student's Mother argues that the evaluation was insufficient because it is based on limited information in a setting (Dr. Preen's office) that Student does not normally have access to; that the evaluation is unreliable because Student's Parents and teachers rated him differently; and that Ms. Mendes, the teacher who responded to the rating scales, did not have sufficient experience with Student to answer the rating questionnaire.⁷

At the time of the evaluation, Student had attended school for less than three months; he was previously in a private clinical setting. (FOF 9, 13) The evaluation report states that both Student's Mother and teacher raised concerns about Student's "thinking style, aggressive

⁷ Ms. Mendes is a certified special education teacher and BCBA. She was employed by BOE as a BCBA from fall 2021 until April 2023 when she was reassigned to the role of special education teacher in the alternative program classroom. She no longer works for BOE. (S-14, S-16; Testimony of SpecEd Supervisor) Student's Mother subpoenaed Ms. Mendes to testify then chose to not call her as a witness when she appeared at the hearing.

behaviors and attention” and that Student’s Mother’s responses “further revealed concerns for his anxiety, depressed mood, and rule breaking behaviors.” (Exh. B-2). The report also discusses Student’s ratings across functions and environments (i.e. home chores versus school activities). The evaluation took into consideration information from Student’s Mother and teacher in conjunction with the standardized assessments. That Student’s Mother and teacher presented some differences in ratings because of their different experiences with Student over time and environment does not invalidate the evaluation.

Dr. Preen’s extensive report indicates that the evaluation used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by Student’s Parents; did not use any single measure or assessment as the sole criterion; and used technically sound instruments. The evaluation resulted in an extensive list of recommendations to allow the PPT to determine Student’s educational needs and develop an appropriate IEP.

BOE has met its burden of proving by a preponderance of the evidence that the May 2023 Neuropsychological evaluation of Student was appropriate.

B. November 2023 Occupational Therapy Evaluation

Occupational Therapist holds a bachelor’s degree in exercise science and a master’s degree in OT and has experience in an outpatient pediatric clinic, birth-to-three program, and elementary school. She is a licensed and board-certified occupational therapist. (FOF 4)

Occupational Therapist conducted a three-day evaluation consisting of observation and a qualitative performance-based assessment that gives the best snapshot of Student’s fine motor skills relative to school performance. (FOF 25) Occupational Therapist credibly testified that the assessment identified Student’s struggles in visual skills, core strength, and upper extremity strength. She produced a four-page report identifying the purpose of the evaluation, the assessments conducted, and Student’s performance. The report discusses his observed classroom and supporting skills, summarizes his strengths, and makes recommendations. (FOF 25; Exh. B-8, S-7)

Student’s Mother argues that the OT evaluation failed to address Student’s sensory impairments in the form of loud vocalizations. Occupational Therapist credibly testified that she looked at Student’s performance in the school setting and determined that his vocalizations were not sensory concerns, that most of his vocalizations were when he was excited or doing movements,⁸ and that his vocalizations did not impact his ability to learn. (FOF 25)

The OT evaluation used assessment tools and methods that gathered relevant information about Student’s fine motor, visual perceptual, and adaptive skill set and was sufficiently comprehensive to identify his OT needs relative to accessing his education.

BOE has met its burden of proving by a preponderance of the evidence that the November 2023 OT evaluation of Student was appropriate.

C. January 2024 Psychological/Cognitive Evaluation

BOE agreed to conduct this evaluation at Student’s Mother’s request to assess Student's current level of functioning and determine if he has an intellectual disability. School Psychologist conducted the evaluation consisting of file review and administration of WISC-V on December 21, 2023 and January 2, 2024. As is the standard, School Psychologist selected the

⁸ Her testimony regarding the vocalizations is consistent with that of School Psychologist and BCBA who also credibly testified that when Student really likes something or is engaging in play, he makes loud vocalizations.

nonverbal index because Student is a mostly nonverbal communicator. The WISC-V is a standardized nationally normed assessment. (FOF 35, 36)

School Psychologist credibly testified that Student had no problem transitioning between the classroom and School Psychologist's office and was "very happy" during the evaluation sessions. Student's overall abilities were measured in the far below average range, which was consistent with Dr. Preen's evaluation results. (FOF 36) School Psychologist did not repeat the assessments conducted by Dr. Preen; she did review Dr. Preen's report as part of this evaluation. (Exh. B-16, S-11; Testimony of School Psychologist)

Student's Mother argues that the evaluation was not comprehensive, tailored, or representative of Student's strengths and weaknesses and that it failed to address Student's educational needs. She also argues that it did not include parental input.

The credible evidence supports a finding that the cognitive evaluation was tailored to Student in that School Psychologist selected a nonverbal index based on Student's communication style and selected an assessment that was not previously administered by Dr. Preen.

School Psychologist credibly testified that cognitive assessments don't have an academic component and did not address his educational needs. The purpose of the evaluation was to determine whether he has an intellectual disability and his current level of cognitive functioning.

Student's evaluation results were consistent with previous evaluations, including Dr. Preen's evaluation, and School Psychologist's observations and were consistent with the credible testimony of other BOE staff who interact with Student. Student's Mother did not disagree with the evaluation when presented at a PPT meeting.

BOE has met its burden of proving by a preponderance of the evidence that the January 2024 psychological/cognitive evaluation of Student was 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?

The answer to Issue One above is not in the negative, so this Issue Two is moot.

3. Did the Board of Education offer Student a free appropriate public education from March 3, 2023 to the end of the 2023-24 school year?

Student's Mother argues that Student's IEP has not changed since March 2023; that the lack of change in his IEP goals indicates lack of progress; that the IEP does not address Student's present levels of performance; that the IEP should not refer to Student's previous private clinical setting; that the IEP goals are inadequate to address Student's deficits; that the IEP is not individualized; that the IEP includes mostly consultations and not enough direct services; that Student is not in the least restrictive environment; and that there are clerical errors on the IEP. She questions whether the IEP is tailored to allow Student to make reasonable progress. She further argues that Student continues to demonstrate weaknesses and that there is not a single area where he exceeds grade level.

The PPT met on March 2, 2023 to develop an IEP for Student to attend school the following day. The PPT developed an IEP based on the information available at that time, including input from Student's Mother and reports and evaluations conducted in Student's previous private clinical settings since he had not yet attended BOE's Elementary School. (FOF 11, 12, 13)

With Student's Mother's consent, BOE had some information from Student's previous private providers and used it to develop Student's IEP. That prior information is appropriately listed in Student's IEP as his then-present levels of performance. The March 2023 IEP cites information from those sources in Student's present level of performance.

Speech Language Pathologist credibly testified that, as a member of the PPT, in developing Student's IEP they used the information that was provided and that it was revised over time as they go to know Student and to learn his strengths, weaknesses, preferences, and how he responds to instruction.

The IEP includes goals and objectives for reading, math, communication, behavior, and social/emotional in an alternative program at BOE's Elementary School. The IEP also includes direct speech and language services for 20 minutes once a week in a small group and three times a week for individual instruction; at least 60 minutes of physical therapy consultation/observation in the areas of gross motor skills and Student's ability to access the school environment between March 3 and April 6, 2023; at least 60 minutes of OT consultation/observation in the areas of fine motor and sensory processing skills across different school environments and activities between March 3 and April 6, 2023; BCBA consult for 30 minutes per month; speech language consult 20 minutes per week; one-to-one paraprofessional for instructional/behavioral support; special transportation; and ESY services. (FOF 11)

At the September 2023 PPT meeting, the IEP was amended to add updated present levels of performance, strengths, concerns/needs under Student's communication goal and to add social/emotional/behavioral and executive functioning goals. (FOF 22; Exh. B-5). At the December 2023 PPT meeting, the IEP was amended to add a fine motor goal and present levels of performance, strengths, concerns/needs under that goal as well as OT consult for 15 minutes per month. (Exh. B-18).

Contrary to Student's Mother's contention, the IEP does include present levels of performance and has changed since developed in March 2023. These changes to the IEP were based on data gathered since Student began attending the alternative program, his progress on goals and objectives, and findings from Dr. Preen's evaluation. (FOF 22, 23, 26, 27, 35)

Credible evidence from Student's IEPs, progress reports, and BOE staff testimony supports a finding that Student has made more than *de minimus* progress since beginning school in March 2023. (FOF 14, 20, 21, 22, 23, 37) For example, Speech Language Pathologist credibly testified that when Student entered school, his spoken language skills were minimal and were limited to labelling; that he now uses spoken language and the AAC device to make requests, answer WH questions to demonstrate his understanding of text, and answers yes/no questions; that he follows directions in school; that he has increased his proficiency in using the AAC device which now has 45 icons on it as compared to 24 when he first started; and that he has made tremendous progress. The credible evidence also supports a finding that given his documented deficits, Student would not be expected to exceed grade level at this early point in his school career.

Student's IEP states that he "requires specialized behavior instruction in a highly structured classroom setting with decreased stimulation and a larger adult to student ratio as compared to the general education classroom in order to be successful throughout his school day." The PPT completed the LRE checklist in determining Student's least restrictive environment. (FOF 27) The decision to place Student in the alternative program classroom with no programming with nondisabled peers at this time is found to be appropriate based on the substantial, credible evidence in the record.

The record does indicate that there are clerical errors on Student's IEP. SpecEd Supervisor testified that she did attend the September 2023 PPT meeting yet is not included on the attendance list. (FOF 22) Student's Father testified that Student's Parents requested a bus monitor instead of use of a buckle clip or harness on the minibus and that the request was granted yet not reflected in the IEP. These procedural clerical errors are found to be harmless errors that did not result in substantive harm to Student or the provision of FAPE to Student.

Student's IEP identifies Student's present levels of performance, is individually based on evaluations that identify Student's intellectual and behavioral impediments, includes strategies to address those impediments, includes measurable goals and objectives, and is reasonably calculated to enable Student to make meaningful progress.

Student's Mother argued that Student's Parents were denied the right to be heard regarding amendments to Student's evaluation and were denied access to his records which impeded their ability to participate and caused a deprivation of educational benefit to Student. She further argues that BOE engaged in a pattern of indifference and that her presence at PPT meetings and observations does not constitute meaningful participation.

Student's Father testified that he was not invited to PPT meetings; that his input was not taken into consideration; that he was not treated as a meaningful participant; and that when he had concerns, he relayed them to Student's Mother who had a better understanding of the issues since she had a lot of direct contact with BOE staff.

The credible evidence supports a finding that Student's Parents were active participants in the PPT and that their input was considered and acted upon. Student's Mother was not just present at PPT meetings; she and her attorney were actively engaged in meaningful participation. BOE conducted six PPT meetings in less than a year, agreed to conduct additional evaluations at Student's Mother's request even when the BOE members of the PPT didn't feel it necessary, communicated regularly with Student's Mother, coordinated multiple in-school observations and trainings for Student's Mother, provided a bus monitor upon request,⁹ reviewed the LRE checklist at a transportation PPT meeting at Student's Mother's request, and changed terminology in the FBA and BSP at Student's Mother's request. (FOF 11, 12, 14, 15, 17, 18, 22, 26, 27, 29, 35, 38, 39, 40, 42, 43, 45) There is no evidence in the record that BOE engaged in a pattern of indifference or violated Student's or Student's Parents procedural rights.

Student's Mother requested extensive discovery and made records requests under FERPA. As indicated above under Procedural Posture, the discovery requests were granted in part and denied in part. BOE's Attorney represented to Student's Mother and the Hearing Officer that BOE provided Student's Mother with all requested educational records pursuant to FERPA. There is no credible evidence that BOE denied Student's Parents access to records, impeded their ability to participate or caused a deprivation of educational benefit to Student.

Student's Mother asked BOE to alter or redact portions of information in Dr. Preen's evaluation report. BOE responded that it had no authority to alter Dr. Preen's report. (Exh. S-14) This is not a denial of Student's Parent's right to participate in Student's educational planning and did not impact provision of FAPE to Student.

BOE is required to craft an IEP informed by assessments, present levels of performance, parent input, and related information that is available at the time the IEP is drafted while applying the expertise of professional staff and making appropriate prospective judgements.

⁹ Student's Father credibly testified that he contacted the bus company and BOE about safety concerns, that he requested a bus monitor, that a bus monitor was added, and that there were no further issues on the bus.

The credible evidence in the record supports a finding that the IEP is reasonably calculated to allow Student to make progress and that Student has in fact make significant progress since beginning school on March 3, 2023.

BOE has met its burden of proving that it offered Student a free appropriate public education.

4. If the answer to Issue Three is in the negative, what shall be the remedy?

The answer to Issue Three above is not in the negative, so this Issue Four is moot.

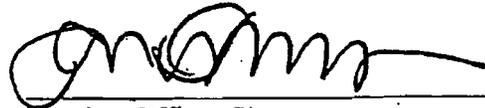
FINAL DECISION AND ORDERS

The Board of Education's evaluation of Student – consisting of a May 2023 neuropsychological evaluation, a November 2023 occupational therapy evaluation and a January 2024 psychological/cognitive evaluation - was appropriate. The Board of Education is not required to fund an Independent Educational Evaluation of Student.

The Board of Education offered Student a free appropriate public education from March 3, 2023 through the date of the hearing.

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