

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Stamford Board of Education v. Student

Appearing on behalf of the Parents: *Pro se*

Appearing on behalf of the Board: Attorney Marsha Moses
Berchem Moses, P.C.
75 Broad Street
Milford, CT 06460

Appearing before: Kelly Moyher, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Is the Board's Psychological Evaluation appropriate?
2. If not, are the Parents entitled to a neuropsychological IEE at Board expense?

PROCEDURAL HISTORY:

The Board filed the Due Process Complaint/Hearing Request on August 28, 2024. The Hearing Officer was appointed on September 3, 2024. A Prehearing Conference took place on September 3, 2024 and a hearing date was scheduled for November 19, 2024.

The issues set forth for hearing were as follows:

1. Is the Board's Psychological Evaluation appropriate?
2. If no, is the Student entitled to a neuropsychological evaluation IEE at public expense?

The Hearing Officer extended the mailing date for the case by 50 days in order to accommodate the hearing date and the rendering of a decision. The hearing took place remotely on November 19, 2024, due to an injury sustained by one of the parties. A Chinese translator was present for the hearing.

At the November 19, 2024 hearing, the parties stipulated to the following:

1. The parties had entered into a settlement agreement that ended in August 2024
2. In accordance with that settlement agreement, the Parent consented to and agreed to make the Student available for such evaluations as the Board deemed necessary in order to plan a program for the Student for the 2024-2025 school year.

3. The evaluations for which the Parent made the Student available were academic, speech, transition, OT, PT and neuropsychological.
4. Those evaluations were the evaluations which the Board deemed necessary in order to plan a program for the Student for the 2024-2025 school year.

The Parent submitted exhibits P-1-P-5 via email and mail. The Parent submitted a letter to the Hearing Officer in lieu of testimony.

The Board entered Exhibits B-1-B-13, and called one witness, Dr. Neuropsych.

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

Briefs were originally due November 29th, 2024. Given the Thanksgiving holiday and the timeline for transcript repository on December 5th, 2024, the Parties were given until December 6th, 2024 for the submission of briefs and the mailing date was extended to December 13th, 2024.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. *SAS Institute Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

SUMMARY:

The Board conducted evaluations of the Student in June and July of 2024 as part of the Student's Triennial Evaluation. A Psychological Evaluation took place on June 27 and July 17, 2024. A PPT took place on July 31, 2024 for the Student's Triennial and Annual Review where the Psychological Evaluation was reviewed. The Parent disagreed with the Psychological Evaluation and requested an IEE. In a letter to the Parent dated August 10, 2024, the Board denied the Parent's request for an IEE. The Board filed a Due Process Complaint in response to the Parent's request on August 28, 2024.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Sec. 10-76h and related regulations, 20 United States Code Sec. 1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178, inclusive, Sections 4-181a and 4-186.

FINDINGS OF FACT:

After considering all the evidence, including documentary evidence and testimony of witnesses, I find the following facts:

1. The Student was born on June 1, 2004 and is 21 years of age. He attends Immaculate High School which is a private parochial school where he is placed by his Parent. The Student is a student within Stamford Public Schools (hereinafter “SPS”).
2. The Student qualifies for special education services as a student with Autism Spectrum Disorder and has a medical history which includes a chromosomal deletion, ADHD, apraxia, dyspraxia and motor concerns. (B-2, B-7).
3. As part of the Student’s Triennial Review, several evaluations were conducted by staff for SPS. The evaluations performed during late June and July 2024 included a speech and language evaluation, a comprehensive academic evaluation, a secondary transition assessment, an occupational therapy evaluation and a psychological evaluation, and also included classroom and employment observations of the Student. (B-3-7, B-9 and 10).
4. The psychological evaluation was conducted by Dr. Neuropsych on June 27 and July 17, 2024. Dr. Neuropsych is a Licensed Clinical Neuropsychologist and a Certified School Psychologist. As of July 2024, Dr. Neuropsych is employed as a School Psychologist with the Arbor Program within SPS. The Arbor Program is a new program which assists high functioning autistic students at the middle school and high school levels. In her role, Dr. Neuropsych designs and implements special education programs tailored to the needs of students with high functioning autism, manages an interdisciplinary team and meets regularly with teachers and administrators to discuss program goals and progress to make necessary adjustments, provides expert advice and guidance on best practices for supporting students with high functioning autism while attending the Arbor Program, and assess the effectiveness of the program to make data-drive recommendations for improvements. Dr. Neuropsych has also been employed as a School Psychologist in other Connecticut school districts, and has also been employed in the roles of Supervising Psychologist and Clinical Neuropsychologist in New York. She holds a Master of Science degree in Clinical Psychology and a Doctor of Clinical Psychology degree with a neuropsychology concentration. In addition to her full-time position as a school psychologist, Dr. Neuropsych currently works part time at the Albert Einstein Department of Pediatrics, Cognitive Neuropsychology Lab where she conducts neuropsychological evaluations and oversees and supports researchers and clinicians in their research, including their evaluations. She has conducted hundreds of neuropsychological evaluations of children from ages 2 to 21. (B-12).
5. The reason for referral for an evaluation with Dr. Neuropsych was to assess the Student’s cognition, learning and memory, behavior and adaptive functioning as part of a comprehensive, multidisciplinary evaluation. Dr. Neuropsych evaluated the following areas;

visual perception, motor coordination, cognition, verbal attention, auditory working memory, attention control, short term auditory control, visual processing, memory and learning, executive functioning, non-verbal abilities, adaptive functioning (including communication skills, daily living skills and socialization), social skills and social emotional issues. The Student was given the following assessment measures by Dr. Neuropsych: 1. Beery-Buktenica Developmental Test of Visual-Motor Coordination, Fifth Edition (Beery VMI); 2. Comprehensive Test of Nonverbal Intelligence-Second Edition (CTONI-2); 3. Social Skills Improvement System, Social-Emotional Learning Edition (SSIS SEL Edition); 4. Vineland Adaptive Behavior Scales, Third Edition (VINELAND-III); 5. Woodcock Johnson IV test of Cognitive Abilities (WJ-IV COG), select tests; and 6. Wide Range Assessment of Memory and Learning, 3rd Edition Brief Record Form (WRAML 3). (B-6, Testimony, Dr. Neuropsych).

6. In order to plan for the evaluation and select assessments appropriate to address the Student's needs, Dr. Neuropsych first considered the referral question and then obtained background information regarding the Student including looking at old IEP's and evaluations and consulting with the Parent and school staff who work with the Student. After consulting with the Student's team and reviewing the Student's file, Dr. Neuropsych choose assessments to be administered to look at areas of concern including fine motor skills, speech and issues with apraxia and cognition. Based on the tests given, Dr. Neuropsych testified that the evaluation was a neuropsychological evaluation. Dr. Neuropsych also noted, upon review of the Student's file, that the Student had significant cognitive and language challenges and sought to choose assessment tools that were not "language heavy" and were geared to obtaining the best results given his profile as reflected in his record. (Testimony, Dr. Neuropsych).
7. Looking at the Student's motor coordination and visual perceptual skills, Dr. Neuropsych administered the Beery VMI and supplemental assessments for visual perception and motor coordination. Dr. Neuropsych administered the evaluation and assessments to look at the Student's brain function and how the brain works with every day functions such as note taking. Dr. Neuropsych began with these tools because they are low stakes and people tend to respond well with an easy assessment. Dr. Neuropsych's findings included the following: 1. Motor difficulties, with additional factors of attention and motivation noted; 2. Visual perception issues, also impacted by attention and motivation, and 3. Significant difficulties with finger and hand movements. Dr. Neuropsych noted that the Beery VMI could not be scored and the Student repeatedly mentioned he was not good at writing. The Student needed significant support in tasks that were completed and Dr. Neuropsych noted significant anxiety for the Student when he was asked to complete any task requiring a motor component highlighting the impact his dyspraxia and fine motor difficulties have on his ability to complete such tasks. It is noted that due to difficulty obtaining results on the Beery VMI, Dr. Neuropsych consulted with the Student's Occupational Therapist ("OT") and it was decided that the OT would readminister the Beery VMI along with the same visual

perception and motor control subtests. (Testimony, Dr. Neuropsych, B-6, Pgs 4-6, 13, B-10, Pg. 2).

8. Dr. Neuropsych administered the CTONI-2 looking to measure the Student's cognitive abilities. She chose this assessment due to the Student's speech difficulties and noted the assessment uses nonverbal formats to measure general intelligence. Dr. Neuropsych noted the Student needed significant prompting to answer assessment questions, and would often respond "I don't know" even though he did not need to give a response verbally. The Student appeared ridged in his responses and often chose choice "C" without looking at the other options. Dr. Neuropsych noted variability among the Student's current scoring with prior evaluations suggesting the Student's effort, attention and stamina impacted the Student's output. The Student's scores on the CTONI-2 Indexes ranged from Poor to Very Poor. (Testimony, Dr. Neuropsych, B6, Pgs. 1-2).
9. The Student was also given select subtests from the WJ-IV COG looking to place emphasis on the most useful measures for identifying the Student's patterns of strengths and weaknesses through different broad abilities. The Student was administered the Short-Term Working Memory Cluster (GWM) which looks at the ability to apprehend and hold information in immediate awareness and then use or manipulate it to carry out a goal. The Student was also given Numbers Reversed which measure short-term auditory working memory and working memory capacity. The Student's nonverbal abilities were assessed using the Concept Formation test, which is part of the Fluid Reasoning Cluster which assess an individual's broad ability to reason, form concepts and solve problems using unfamiliar information or novel procedures. The Student was given a second nonverbal test, Visualization, which is made up of two subtests: Spatial Relations and Block Rotation. These subtests measure an individual's ability to perceive, analyze, synthesize and think with visual patterns. The Student's visual processing was assessed using the Letter Pattern Matching test which is used to measure speed at which an individual can make visual symbol discriminations and identify common spelling patterns. The Student was also given a Number Pattern Matching test. He was also given the Picture Recognition test which is used to assess visual memory. The Student scored a <K:0 grade equivalent on all subtests and scored in the <2:0-5:6 range for age equivalency. (Testimony, Dr. Neuropsych, B-6, Pgs. 2-4).
10. The Student's learning and memory was assessed with the WRAML-3. This assessment was first administered on June 27th, 2024 but the Student was unable to provide any output. The assessment was attempted again on July 17th, 2024, and a second evaluator that the Student was familiar with was in the room to help the Student regulate himself using techniques such as deep breathing, counting and hand squeezes. It was thus noted that the Student was exposed to the testing twice. The Brief Immediate Memory Index looked at how well the Student was able to learn and recall both meaningful and minimally-related rote information. The Student required significant prompting outside standardization of the tasks and Dr. Neuropsych noted the Student may have more knowledge that he is able or willing to share

on the tasks and heavily relied on the support and prompting of others. The Brief Delayed Memory Index looked at how well the Student could retain and retrieve both meaningful and minimally-related visual and verbal information after a 20-30 minute delay. The Brief Recognition Memory Index estimated how well the Student retained information previously presented on the immediate recall subtests and was derived from scores on the Design Learning Recognition and Story Memory Recognition subtests. The Student presented with higher verbal and visual recognition scores and lower immediate and delayed memory scores suggesting that the Student may not have encoded information in a logical or organized manner but when given cues he can effectively recall information. Dr. Neuropsych noted the importance of having this information in a neuropsychological evaluation as knowing the Student responds well to visual cues helps to make sense of his profile (Testimony, Dr. Neuropsych, B-6, Pgs. 6-7.).

11. The Student's adaptive functioning was assessed using the Vineland-III. Dr. Neuropsych noted results from this instrument were only available from the Parent, and were not filled out by three of the Student's teachers. The assessment looked at the Student's communication skills, daily living skills, socialization skills and motor skills. The Parent rated the Student at the first percentile in the overall Adaptive Behavior Composite, with a rating in the first percentile in the Communication domain, less than the first percentile in the Daily Living Skills domain and the first percentile in the Socialization domain. Dr. Neuropsych looked at the Student's Social emotional functioning through the rating scales provided by the Social Skills Improvement System. These rating scales were also provided to the Parent and the same three Immaculate High School teachers. The Parent did complete the rating scales and this time one teacher did complete the rating scales. In general, the Parent rated the Student in the average range for the Student's overall social-emotional functioning. In contrast, the teacher's rating fell in the below average range, indicating problems with social emotional functioning. Dr. Neuropsych found that this rating indicated a need for social-emotional skills instruction, particularly given the low score in the Relationship Skills subtest, which was Well Below Average on the teacher rating scale. (Testimony, Dr. Neuropsych, B-6, Pgs. 7-9).
12. In assessing the Student's social and emotional functioning, the Parent and several of the Student's teachers were given the SSIS SEL Edition. Scores were reported in the average to below average range. Dr. Neuropsych recommended additional instruction in social-emotional skills based on the Student's scores, as well as additional instruction to help develop self-awareness, social awareness, relationship skills and tasks involving reading and/or math. She also noted proficiency in core social-emotional skills and self-management. Dr. Neuropsych noted that the results of the SSIS SEL Edition spill into results that would have been obtained on the Vineland-III in terms of adaptive functioning and was able to provide an understanding of social relationships, the Student's academic competency and all areas of adaptive functioning. Information from the rating scale helped paint a picture of the Student's adaptive skills at school, even though his teacher didn't fill out that specific rating scale. Dr. Neuropsych believed she had obtained sufficient information about the

Student's adaptive functioning in the educational environment. Concern was raised by the Parent that the rating scales were not provided to one of the Student's private providers. Dr. Neuropsych explained that the Vineland protocol provides two types of rating scales for parents/caregivers and teachers. None of the Student's private providers were teachers and the one-to-one aide who accompanied him to his high school program was a behavior technician. (Testimony, Dr. Neuropsych B-6, Pgs. 8-11).

13. The Parent noted that during communications with staff for SPS, the evaluation that was referred to was a neurological evaluation. The heading on the evaluation of the Student administered by Dr. Neuropsych is titled 'Psychological Evaluation'. Dr. Neuropsych explained that psychological evaluation is an umbrella term, with the term neuropsychological evaluation underneath the umbrella. Based on the tests given throughout the psychological evaluation, the evaluation falls under the term of neuropsychological evaluation. (Testimony, Ms. Parent and Dr. Neuropsych.).
14. At a PPT on July 31, 2024 Dr. Neuropsych's evaluation was reviewed along with other evaluations that were performed as part of the Student's triennial review. Dr. Neuropsych made recommendations in the areas of executive functioning, working memory, accommodations (including those to assist with attention), social-emotional and social relationships. The Student's IEP was reviewed and a change of placement was recommended for the Student. The Parent disagreed with the psychological evaluation and requested an IEE educational evaluation, later changing her request for an IEE neuropsychological evaluation. The request was denied at the PPT and was also denied in a letter to the Parent dated August 10, 2024. (Testimony, Dr. Neuropsych, B-6, Pg. 11 and B-11, Pgs. 2-3).
15. On August 28, 2024, the Due Process Hearing was requested by the Board and was duly noticed to all parties. (HO-1).

CONCLUSIONS OF LAW AND DISCUSSION:

1. Under the IDEA and Connecticut state law, a school district must reevaluate a student who receives special education services at least once every three years. This triennial reevaluation's purpose is to evaluate a student's relevant functional, developmental, and academic skills to determine whether the student continues to be eligible for special education services and to provide any necessary updates to the student's IEP. 20 U.S.C. Sec. 1414(a)(2)(B)(ii); 34 C.F.R. Sec. 300.305(a)(2)(1)(B)(iv), R.C.S.A. Sec. 10-76d-9.
2. The purpose of reevaluation under the IDEA is to determine continuing eligibility and to provide necessary updates and modifications for the Student's IEP. A particular eligibility classification is immaterial to providing a free and appropriate public education so long as the IEP is tailored to the unique needs of the student. 20 U.S.C. Sec. 1414(a)(2)(B)(ii); 34 C.F.R. Sec. 300.305(a)(2)(1)(B)(iv), R.C.S.A. Sec. 10-76d-9; *Fort Osage R-1 School District*

v. Sims, 56 IDELR 282 (8th Cir. 2011); see also *Torda v. Fairfax County School Board*, 61 IDELR 4 (4th Cir. 2013, unpublished), cert. denied, (U.S. 03/24/14) (No. 13-6908).

3. IDEA regulations provide standards for the manner in which evaluations are to be conducted. These standards are set forth in 34 C.F.R. Sec. 300.300 to 34 C.F.R. §300.311. Connecticut state regulations implement IDEA regulations in R.C.S.A. Sec. 10-76d-9(a).
4. The evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent. The tools used must be nondiscriminatory on a racial or cultural basis and be administered in a language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally and be geared to providing relevant information to assist in determining the educational needs of the child. 20 U.S.C. Sec. 1414(a)(2)(B)(ii), (3)(A)(i-ii); 34 C.F.R. Sec. 300.304; R.C.S.A. Sec. 10-76d-9(a)
5. No single measure or assessment may be used as the sole criterion for determining eligibility for special education services and for determining the appropriate program. Evaluators must be trained and knowledgeable and appropriately certified and/or licensed to administer assessments and measures and administer the assessments in accordance with the test producer's instructions. 34 C.F.R. Sec. 300.304(b)(1) and (2) and (c)(iv); R.C.S.A. Sec. 10-76d-9(a).
6. The instruments used for assessments must be technically sound and may be used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. See 34 C.F.R. §300.304(b)(3). "Technically sound instruments generally refers to assessments that have been shown through research to be valid and reliable." 34 C.F.R. Sec. 300.304 *Comments* (2006).
7. The chosen assessments must be tailored to assess specific areas of educational need of the child and not merely those that are designed to provide a single general intelligence quotient. See 34 C.F.R. Sec. 300.304(b)(2).
8. Assessments must be selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). 34 C.F.R. Sec. 300.304(c)(3).
9. The child should be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 24 C.F.R. Sec. 300.304(4).

10. If a student receives an evaluation with which the parent disagrees, a parent has a right to an independent educational evaluation (“IEE”) at public expense, which means at no cost to the parent. 34 C.F.R. Sec. 300.502, R.C.S.A Sec. 10-76d-9(c)(1) and (2). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure either an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria. If the impartial hearing officer finds that a school district's evaluation is appropriate, a parent may not obtain an IEE at public expense. 34 C.F.R. Sec. 300.502; R.C.S.A. Sec. 10-76d-9(a).
11. The evidence is undisputed in this case that the Board’s Psychological Evaluation, which was classified by Dr. Neuropsych to be a neuropsychological evaluation, was appropriate and in compliance with applicable procedural requirements. Dr. Neuropsych was attentive to the Student’s limitations as well as the testing environment in choosing assessments that addressed the Student’s impaired sensory, manual and speaking skills, while accurately reflecting the Student’s aptitude and achievement. (Finding of Fact 5 and 6).
12. The Psychological Evaluation of the Student used several formal assessment instruments which included the Beery VMI, CTONI-2, SSIS SEL Edition, Vineland-III, WJ-IV COG and WRAML 3. The evaluation tools are all technically sound, valid and reliable instruments for the uses to which they were put in assessing the Student. (Finding of Fact 5, 7-12).
13. The assessments used were administered to the Student in his native language. It is reasonable to conclude that the assessments are not racially or culturally discriminatory for the Student as these assessments are frequently used in public schools in this area. (Finding of Fact 5-16).
14. The Psychological Evaluation was specifically selected to address the identified concerns of this Student which were cognition, learning and memory and behavior and adaptive functioning as part of a comprehensive, multidisciplinary evaluation. Dr. Neuropsych administered six different assessments, each of which had numerous subtests and sections. (Finding of Fact 6-12).
15. In compliance with the IDEA, the Psychological Evaluation of the Student was conducted by Dr. Neuropsych, a certified and licensed professional and evaluator who is trained, knowledgeable and appropriately certified and who employed a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the Student, including information provided by the Student to determine whether Student continued to be eligible for special education services and to update Student’s IEP. R.S.C.A. Sec 10-76-9(a) 34 C.F.R. Sec. 300.304(b)(4). (Finding of Fact 4).
16. No single measure or assessment was the sole criterion for determining eligibility for special education services and the determination of eligibility did not rest on an intelligence quotient. The determination of continuing eligibility also took into account factors such as the Student’s functional physical, medical and developmental history and student’s present academic performance. 34 C.F.R. Sec. 300.304(b)(1) and (2); 34 C.F.R. Sec. 300.304(c)(2) and (3). (Finding of Fact 5-12)

17. Dr. Neuropsych, who evaluated the Student, is an experienced professional who is trained and knowledgeable and appropriately experienced and certified to conduct the assessments and administered the assessments in accordance with the test producer's instructions. 34 C.F.R. Sec. 300.304(c)(1)(iv) and (v). (Finding of Fact 4).
18. The testing instruments are widely recognized as technically sound instruments, 34 C.F.R. Sec. 300.304 (b)(3) and 34 C.F.R. Sec. 300.304(c)(3) as are the chosen assessments.
19. The Board's Psychological Evaluation is in compliance with 34 C.F.R. Sec. 300.301- 305 and R.C.S.A. Sec. 10-76d-9(a).

FINAL DECISION AND ORDER:

The Psychological Evaluation of the Student was appropriately designed and administered. The Student is not entitled to an neuropsychological evaluation IEE at public expense.

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

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



Hearing Officer Signature



Hearing Officer

Name in Print