

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Easton Board of Education v. Student<sup>1</sup>

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

Appearing on behalf of the Board of Education: Attorney Marsha Belman Moses  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, Connecticut 06460

Appearing before: Janis C. Jerman  
Hearing Officer

**FINAL DECISION AND ORDER**

**PROCEDURAL POSTURE**

A special education hearing in the above-captioned matter was requested by the Board of Education's ("BOE's") Attorney via letter dated January 23, 2017<sup>2</sup> (HO-1).<sup>3</sup> It was received by Student's Mother on January 30. The original deadline to mail the final decision and order was March 16. A telephonic pre-hearing conference was held on February 21. Student's Mother appeared on behalf of Student and Attorney Moses appeared on behalf of BOE where the following issues were identified:

1. Are the Board of Education's evaluations of Student appropriate?
2. If the answer to Issue 1 is in the negative, is Student entitled to an Independent Educational Evaluation for occupational therapy, physical therapy, pre-academic, and speech and language therapy at public expense?

Via email dated February 21, BOE's Attorney requested a 30-day extension of the deadline to mail the final decision and order to allow the parties time to participate in mediation. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until April 14. On March 9, BOE's Attorney requested a 30-day extension of the mailing date to accommodate scheduling hearings in April. After fully considering the positions of the parties, the request was granted and the deadline to mail the final decision and order was extended until May 12. Hearing was scheduled for April 17. Student's

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<sup>1</sup> In order to comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of school staff members and witnesses in place of names and other personally-identifiable information.

<sup>2</sup> All dates are 2017 unless otherwise indicated.

<sup>3</sup> Hearing Officer Exhibits are cited as "HO-#"; Student's Exhibits as "P-#"; and BOE's Exhibits as "B-#."

Mother indicated that she was not available on that date due to a pre-planned trip. Hearing was rescheduled for April 26.

At the outset of the hearing, BOE's Attorney indicated that BOE had granted Student's Mother's request for an independent occupational therapy evaluation and requested to withdraw the issue with regard to denial of that request. Student's Mother agreed that BOE had granted the request for an independent occupational therapy evaluation and agreed to the withdrawal of that issue. The issues were re-framed as follows:

1. Are the Board of Education's evaluations of Student appropriate?
2. If the answer to Issue 1 is in the negative, is Student entitled to an Independent Educational Evaluation for physical therapy, pre-academic, and speech and language therapy at public expense?

After both parties rested their cases, BOE's Attorney made an oral motion for summary judgement on the record. BOE's Attorney argued that Student's Mother was looking at the issue of eligibility, not concerns about the quality of BOE's evaluation and that the issue is limited to whether BOE's evaluation of Student was appropriate, not whether Student's eligibility determination was appropriate. After fully considering the positions of the parties, the motion for summary judgement was denied on the record. Whether or not BOE's evaluation was appropriate is a question of fact that must be considered and is not appropriate for resolution on a motion for summary judgement.

At the conclusion of the hearing, the parties requested an extension of the deadline to mail the final decision and order in order to accommodate a briefing schedule. After fully considering the position of the parties, the request was granted on the record. The deadline to mail the final decision and order was extended until June 9 and the parties were given until May 15 to file written briefs.

### **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 Fact**<sup>4</sup>

1. At the time of the hearing, Student was three years old and attending preschool (Testimony of Student's Mother).
2. Student's Mother noticed gross motor aberrations and hypertonic symptoms when Student was little. He had poor balance, walked on his tip toes, had issues with falling, and core strength issues (Testimony of Student's Mother). Student's Mother also noted fine motor issues.

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<sup>4</sup> In the Discussion, Findings of Fact are cited as "FOF-#."

3. Student's Parents took Student to a neurologist who said Student has high normal hyper tone (Testimony of Student's Mother).
4. Student's Parents started Student in occupational therapy ("OT"), in a "medical model" that did not focus on education issues (Testimony of Student's Mother). The 30-minute weekly therapy sessions focus on independent activities of daily living.
5. Student's Mother requested an evaluation and services from BOE because she feels Student can use more services and she wanted help seeing if he was qualified for services (Testimony of Student's Mother). She wants to be an advocate for her son and wants him to be ready for kindergarten without any issues.
6. Student's Mother is concerned about his fine and gross motor skills, speech, and critical thinking. She has concerns about self-esteem and social issues as well (Testimony of Student's Mother).
7. When a family calls BOE's special services office, BOE sends a Preschool Request for Support form for the family to complete to identify areas for concern (B-1; Testimony of Director of Special Services).
8. On April 28, 2016, BOE sent Student's Mother a Preschool Request for Support form to complete (B-1). The form was completed by Student's Mother and Preschool Director and returned to BOE on May 27, 2016 (B-2, B-3).
9. The form identifies concerns about gross motor skills, muscle tone, and language. On the form, gross and fine motor skills, coordination, uses simple sentences, and tells simple experiences are rated as below age level by Preschool Director. Student's Mother noted on the form that she disagrees with the assessment of below age level for "uses simple sentences" and "tells simple experiences" (B-2, B-3; Testimony of Student's Mother).
10. Self-help skills, social development skills, motor planning, stamina, answers "Wh" questions, and follows simple directions are all rated as appropriate for age level (B-2, B-3).
11. On June 2, 2016, BOE issued a Notice of Planning and Placement Team ("PPT") Meeting scheduled for June 9, 2016 to review a referral to special education and consider/plan an evaluation (B-4).
12. On June 8 and 10, 2016 Student's Father contacted Director of Special Services via phone and letter to indicate that Student's Parents no longer want to pursue the referral to special education and an evaluation (B-5, B-6; Testimony of Director of Special Services).
13. As a result of Student's Father's communication, the PPT meeting did not take place (Testimony of Director of Special Services).
14. On July 13, 2016, Student's Mother contacted BOE again to discuss support services. BOE sent Student's Mother another Preschool Request for Support form to complete (B-8).
15. On August 8, 2016, BOE issued a Notice of PPT Meeting scheduled for August 25, 2016 to review a referral to special education and consider/plan an evaluation (B-10).
16. The PPT met, received updated information about Student from Student's Mother, and agreed to conduct OT, physical therapy ("PT"), speech and language, and pre-academic evaluations (B-11; Testimony of Director of Special Services). Student's Mother signed consent for the evaluations (B-11).
17. Special Education Teacher evaluated Student in September 2016 (B-12). She administered the Bracken Basic Concept Scale Revised ("BBCS-R") which assesses basic development and comprehension of 308 foundational and functionally relevant educational concepts for children of Student's age. Student's scores all fell within the average range, including the School Readiness Composite subtests (B-12).

18. Occupational Therapist evaluated Student on September 13 and 20, 2016 (B-15). Occupational Therapist administered the Peabody Developmental Motor Scales 2<sup>nd</sup> Edition (“PDMS-2”) which is composed of six subtests that measure interrelated motor abilities that develop early in life. PDMS-2 measures motor skills for children from birth through six years of age (B-15). Student’s standard scores indicate below age expected fine motor skills (B-15).
19. Speech Language Pathologist evaluated Student on September 13 and 20, 2016 after the conclusion of the OT evaluation (B-20). Speech Language Pathologist administered the Preschool Language Scales 5<sup>th</sup> Edition (“PLS-5”), Speech-Language Sample Analysis, Goldman-Fristoe Test of Articulation 3<sup>rd</sup> Edition (“GFTA-3”), and the Khan-Lewis Phonological Analysis 3<sup>rd</sup> Edition (“KLPA-3”). Student’s results on the GFTA-3, KLPA-3, and analysis of his speech reveal at-risk phonological and single word articulation skills and age-appropriate intelligibility (B-20). Speech Language Pathologist’s report indicates that Student does not present with significant speech and language delays and that his skills should continue to be monitored to ensure continued development.
20. On October 3, 2016, BOE issued a Notice of PPT Meeting scheduled for October 31, 2016 to review evaluations and determine eligibility for special education services (B-14).
21. Student’s Parents requested that the PPT meeting be rescheduled (B-14, B-16). The PPT meeting was rescheduled for November 10, 2016 (B-18).
22. Physical Therapist evaluated Student on October 14, 2016 (B-17). Physical Therapist administered the PDMS-2 stationary, locomotion, and object manipulation subtests. Student scored in the low average range. Physical Therapist stated that he has developed the basic gross motor skills for his age (B-17).
23. On November 2, 2016, BOE sent Student’s Parents copies of the evaluation reports for the upcoming PPT meeting (B-19; Testimony of Student’s Mother).
24. The PPT met on November 10, 2016 to review the evaluation results and determine eligibility (B-21). Special Education Teacher reported that Student’s scores on the academic evaluation were in the average range. Speech Language Pathologist reported that Student scored in the average range for all testing in that area. Student’s fine motor skills were reported as being below average and his gross motor skills were reported as in the low average range.
25. Because Student’s pre-academic and speech and language skills are in the age appropriate range, he was deemed ineligible for special education services at this time (B-21). Director of Special Services explained to Student’s Mother that OT and PT are related services that cannot stand alone on an Individualized Education Program (“IEP”) (Testimony of Director of Special Services).
26. Student’s Mother contacted Director of Special Services to express concerns about the PPT recommendations and the ineligibility decision (B-23; Testimony of Director of Special Services).
27. On December 5, 2016, Student’s Mother wrote to Director of Special Services expressing concerns about Student’s skills and disagreement with the evaluation. Student’s Mother requested an Independent Educational Evaluation (“IEE”) (B-24).
28. On December 9, 2016, Director of Special Services wrote to Student’s Mother inquiring about the possibility of putting the IEE process on hold to engage in mediation to try to resolve the concerns (B-25).

29. On January 18, Director of Special Services wrote to Student's Mother indicating that since she had not received a response to the request for mediation and the IEE request was pending, BOE would proceed with a due process hearing request (B-26).
30. BOE requested a due process hearing via letter dated January 23 (HO-1).
31. On January 24, Student's Mother wrote a letter indicating that she has already proceeded with an independent PT evaluation and that she is going to take Student for an independent speech evaluation and requesting services for him (B-27).
32. Prior to the hearing date, BOE granted the request for an independent OT evaluation at public expense (Testimony of Director of Special Services, Student's Mother). BOE granted this request because it seemed to be a primary concern of Student's Mother and Director of Special Services wanted to offer "an olive branch" to the family to attempt to work together and move forward (Testimony of Director of Special Services).

### **Conclusions of Law**

1. A parent has the right to an independent educational evaluation 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 ("ConnRegs") § 10-76d-9.
2. If a parent requests an independent educational evaluation 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); ConnRegs § 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. ConnRegs § 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); ConnRegs § 10-76d-9.

### **Discussion**

Each of the issues identified in this case is addressed in this Discussion section. All of the parties' arguments and evidence have been reviewed and considered by the Hearing Officer.

#### **I. Are the Board of Education's evaluations of Student appropriate?**

Student's Mother raised concerns about Student's fine motor skills, impulsivity, and sensory issues (B-3). On the Request for Support form, Student's Mother indicated that Student was at appropriate age level in these areas:

- Social development: shares, participates willingly, respects other people and their property, completes tasks, handles conflict, play/social skills;
- Physical development: motor planning, stamina;
- Speech and language skills: uses simple sentences (she wrote "he uses 4-5 words per sentence"), tells simple expressions, answers WH questions, Follows simple direction;
- Self-help skills: dressing, eating.

On the Request for Support form, Student's Mother indicated that Student was below age level in these areas:

- Physical development: gross motor skills, fine motor skills, and coordination;
- Self-help skills: toileting (she noted that he was "trying but not there").

Student's Mother also noted that he articulates these letters which are normed by age 3: p, m, h, n, w, and b; and these letters which are normed by age 4: k, g, d, t, f, and y.<sup>5</sup> Student's Mother testified that Student has made progress with private PT and OT sessions but thinks he can benefit from more. She is concerned that he falls in a gap because he is on the low side but not enough standard deviations below to qualify for services. Student's Mother believes that early intervention will help Student be more successful.<sup>6</sup>

BOE agreed to conduct OT, PT, speech and language, and pre-academic evaluations (B-11; Testimony of Director of Special Services; FOF-16). Student's Mother signed consent for the evaluations (B-11; FOF-16). Following completion of the evaluations, Student's Mother primarily agreed that the results captured Student's level of performance, as noted below. Student's Mother's primary concerns are around Student getting additional supports and early intervention to ensure he does not fall in a gap and around BOE's decision of ineligibility for special education and related services. This case is limited to the stated issues regarding appropriateness of the evaluation.

#### **A. Pre-academic Evaluation**

Special Education Teacher holds a Connecticut 065 Comprehensive Special Education (pre-K to 12) certificate (B-30; Testimony of Special Education Teacher). She holds a bachelor's of science degree and a master's degree in special education. She has been employed by BOE since 2006. Special Education Teacher works with the preschool inclusion program, develops daily lesson plans, develops and implements IEPs, participates in PPT meetings, conducts academic and pre-academic assessments, and supervises two paraprofessionals in two preschool classes with three and four year old students (Testimony of Special Education Teacher). These classes include typically developing and special needs students.

The purpose of an academic preschool evaluations is to see if a Student is developing at the same rate as peers or whether the student is at risk and in need of special support. Recognizing that children develop at different rates, the assessment looks for significant discrepancies (Testimony of Special Education Teacher). Special Education Teacher reviewed the Request for Support forms and the report of the August 25 PPT (Testimony of Special Education Teacher). Attendees at the August 25 PPT meeting told Special Education Teacher that a pre-academic evaluation was recommended by the PPT. Special Education Teacher testified that the summary of the August 25 PPT meeting did not identify concerns raised in the pre-academic area.

Special Education Teacher evaluated Student in September 2016 (B-12). She administered the BBCS-R which is a comprehensive test with 11 subareas including the school readiness composite (Testimony of Special Education Teacher). She has administered the BBCS-R approximately 30 times in her career. The assessment was administered in the classroom. Student came into the classroom, sat down, and completed the assessment with Special Education Teacher. During the nonverbal test, Student was asked to point to pictures. Special Education Teacher had no concerns about Student's behavior. Student's scores all fell within the

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<sup>5</sup> Student was aged two years and nine months at the time that the form was completed (B-3).

<sup>6</sup> Student underwent an independent OT evaluation in April 2015 and an independent PT evaluation in November 2016. These evaluations were not provided to BOE. Student participates in private OT and PT every other week, alternating. Student's progress in OT and PT is consistent with BOE's evaluations (Testimony of Student's Mother).

average range, including the School Readiness Composite subtests (B-12; FOF 17). No discrepancies were noted at that time.

Student's Mother testified that she believes that the pre-academic evaluation accurately captures Student's level of performance.

The PPT met on November 10, 2016 to review the evaluation results and determine eligibility (B-21). Special Education Teacher reported that Student's scores on the academic evaluation were in the average range. Student's Mother did not express concerns about the evaluation at the PPT meeting (Testimony of Special Education Teacher).

Something more than mild discrepancies, such as being 1.5 to two standard deviations below the mean, are needed to support a finding of eligibility (Testimony of Special Education Teacher). Special Education Teacher testified that the pre-academic evaluation was performed in accordance with all professional standards and protocols and consistent with the directions of the test publisher's manual; that she holds the credentials to administer the assessment and analyze the results; that the assessment was normed to Student's age; that the results are valid and reliable indicators of his functioning in each area assessed; that the tests are not discriminatory based on race or culture; that it was administered in a manner likely to yield information that Student knows; that it was used for the purposes intended; that she obtained enough information to be able to contribute to the discussion regarding eligibility; that it was likely to yield accurate results; and that Student was assessed in all suspected areas of disability in the pre-academic area.

Special Education Teacher's testimony was credible. The credible evidence, both testimony and documentary, supports a finding that BOE's pre-academic evaluation was appropriate and in compliance with 34 CFR § 300.304.

### **B. Speech and Language Evaluation**

Speech Language Pathologist obtained a bachelor's of science degree in communication disorders and a master's degree in speech language pathology. She holds a Connecticut teacher's certification and a license from the state Health Department (B-31; Testimony of Speech Language Pathologist). Speech Language Pathologist has worked as a speech language pathologist since 2002 and has been employed by BOE in that capacity since 2006 (B-31). She has worked with students aged 3 to 21; with developmental delays, learning disabilities, apraxia, and speech and language delays. She has also worked with children in the birth to three program (Testimony of Speech Language Pathologist). Her current responsibilities include evaluating students for speech and language needs, serving as case manager for students with such needs, developing goals and objectives for IEPs, and consulting with and educating families and staff on speech and language issues. Speech Language Pathologist has conducted over 500 speech and language evaluations in her career, and more than 300 have been with preschool children (Testimony of Speech Language Pathologist).

Speech Language Pathologist was asked to evaluate Student after the August 25 PPT meeting. She spoke with the Occupational Therapist who did attend the PPT meeting and reviewed the meeting notes (B-11; Testimony of Speech Language Pathologist). She reviewed the Request for



Support forms which indicated that Student is below age level for “uses simple sentences” and “tells simple experiences”; that Student’s Mother wrote “I don’t agree” next to those checkmarks on the form; and that Student’s Mother noted Student as “appropriate age level” on all items in the speech and language skills section of the form (B-3). Student’s Mother also noted in the margin that Student “is shy so he doesn’t always speak as much as he does at home.” (B-3).

Speech Language Pathologist looked at the areas of concern expressed by Preschool Director and Student’s Mother in determining what assessments to administer. Speech Language Pathologist evaluated Student on September 13 and 20, 2016 after the conclusion of the OT evaluation (B-20; FOF-19). Speech Language Pathologist administered the PLS-5, Speech-Language Sample Analysis, GFTA-3, and the KLPA-3 (B-20; FOF-19).

The PLS-5 looks at auditory comprehension and expressive communication to determine what Student understands and can communicate. It covers a lot of different areas and gives a picture of how language is developing. The PLS-5 is a standard and well-respected assessment (Testimony of Speech Language Pathologist).

The Speech Language Sample Analysis looks at morphemes, which are smaller units of language, as a marker for how language is progressing. The assessment looks at spontaneous and probed language and measures the sophistication of a child’s language (Testimony of Speech Language Pathologist).

The GFTA-3 breaks down sounds and word positions and compares them to other children of Student’s age. The KLPA-3 assesses phonological process. Student’s results on the GFTA-3, KLPA-3, and analysis of his speech reveal at-risk phonological and single word articulation skills and age-appropriate intelligibility (B-20). The mean is 100 with a standard deviation of 15. Student scored 99. A score should be 1.5 standard deviations below the mean with additional impacts to be considered eligible for services (Testimony of Speech Language Pathologist). Student had errors that are within a developmentally appropriate range.

Speech Language Pathologist’s report indicates that Student does not present with significant speech and language delays and that his skills should continue to be monitored to ensure continued development (B-20). Speech Language Therapist determined that Student does not qualify for speech and language services at this time and that there were no concerns that warranted intervention. Student’s Mother testified that it was hard to answer whether the speech and language evaluation results accurately captured Student’s level of performance because she doesn’t know what it all means.

Speech Language Pathologist participated in the November 10 PPT meeting to review the evaluation results and determine eligibility (B-21). Student’s Mother did not express concerns about the evaluation at the PPT meeting (Testimony of Speech Language Pathologist).

Speech Language Pathologist testified that the speech and language evaluation was performed in accordance with all professional standards and administered consistent with the directions of the test publisher’s manual and protocols; that she holds the credentials to administer the assessment and analyze the results; that she used the most recent versions of the tests and that they were

normed to Student's age; that the results are valid and reliable indicators of his functioning; that the tests are not discriminatory based on race or culture; that it was administered in his native language; that it was used for the purposes intended; that the results were accurate, valid and reliable; that the tests provided sufficient information for Speech Language Pathologist to be able to participate in the eligibility discussion; and that Student was assessed in all suspected areas of disability in the area of speech and language.

Speech Language Pathologist's testimony was credible. The credible evidence, both testimony and documentary, supports a finding that BOE's speech and language evaluation was appropriate and in compliance with 34 CFR § 300.304.

### **C. Physical Therapy Evaluation**

Physical Therapist is self-employed and since 1990 has had a contract with BOE to provide all PT services required by BOE (B29; Testimony of Physical Therapist). She has a bachelor's of science degree and a Certificate of Physical Therapy (B-29). She is a licensed physical therapist in Connecticut. In her career, she has provided direct therapy to children and adults, conducted PT evaluations, and developed goals and objectives for IEPs (Testimony of Physical Therapist). She estimates that she has conducted hundreds, maybe even 1,000, PT assessments for educational purposes. She conducts 10-15 PT evaluations for preschoolers each year (Testimony of Physical Therapist).

Physical Therapist attended the August 25 PPT meeting, reviewed the Request for Support forms and heard Student's Mother express concerns about Student walking on his tip toes, having difficulty riding a tricycle, and having decreased core strength. Physical Therapist recommended that Student be assessed under the gross motor skills section of the PDMS-2 which is a standardized tool that covers comprehensive assessment of gross motor skills for age's birth to six years. This would measure Student's core strength, balance, locomotion, and ball skills. Physical Therapist testified that riding a tricycle is not included in gross motor testing, is not a concern at that age, and is not educationally appropriate to assess. Physical Therapist has administered the PDMS-2 hundreds of times (Testimony of Physical Therapist).

Physical Therapist administered the assessment in the therapy room at BOE's elementary school on October 14, 2016 (B-17). Student was accompanied by his mother. Student had no difficulty coming into the therapy room. Physical Therapist administered the PDMS-2 stationary, locomotion, and objet manipulation subtests. During the assessment, Student had difficulty maintaining position on his tip toes, walking on a line and hopping on one foot (Testimony of Physical Therapist). Student's standard score on each of the three subtests was eight. The average range is from eight to twelve; Student scored on the low average range (B-17; Testimony of Physical Therapist). Student's gross motor quotient was 87 (B-17); the average is 90 (Testimony of Physical Therapist).

Physical Therapist's report states that Student has developed the basic gross motor skills for his age and that he "is a child that seeks out a tremendous amount of movement and is not demonstrating a great deal of caution when he is quickly moving and climbing" (B-17; FOF 22).

Physical Therapist was not present at the November 10 PPT meeting where the evaluation was reviewed (B-21; Testimony of Physical Therapist). Student's Mother signed a waiver of attendance form (B-21). The Occupational Therapist reviewed the PT evaluation at the PPT meeting (Testimony of Physical Therapist). Student was found to be not eligible for PT services because he scored in the average range and was not far enough below standard. A score two deviations below average (a score of four) would support an eligibility determination (Testimony of Physical Therapist). Physical Therapist testified that Student demonstrated a lot of skills for someone his age. Student's progress in OT and PT is consistent with BOE's evaluations; Student's Mother does not disagree with the PT evaluation results (Testimony of Student's Mother).

Physical Therapist testified that the PT evaluation was performed in accordance with all professional standards and administered consistent with the directions of the test publisher's manual; that she holds the credentials to administer the assessment and analyze the results; that the assessment was normed to Student's age; that the results are valid and reliable indicators of his functioning; that the tests are not discriminatory based on race or culture; that it was administered in his native language; that it was used for the purposes intended and likely to yield accurate information; that the results were valid, reliable, and unbiased; and that Student was assessed in all suspected areas of disability in the area of gross motor skills.

Physical Therapist's testimony was credible. The credible evidence, both testimony and documentary, supports a finding that BOE's physical therapy evaluation was appropriate and in compliance with 34 CFR § 300.304.

#### **D. Occupational Therapy Evaluation<sup>7</sup>**

Occupational Therapist evaluated Student on September 13 and 20, 2016 (B-15; FOF-18). Occupational Therapist administered the PDMS-2 which is composed of six subtests that measure interrelated motor abilities that develop early in life. PDMS-2 measures motor skills for children from birth through six years of age (B-15). Student's standard scores indicate below age expected fine motor skills (B-15; FOF-18).

Student's Mother testified that she believes that the OT evaluation accurately captures Student's level of performance. Student's Mother asked whether Student could receive OT services. Director of Special Services explained to Student's Mother that OT and PT are related services that cannot stand alone on an IEP (FOF-25; Testimony of Director of Special Services).

#### **E. Totality of the Evaluation**

The credible evidence supports a finding that BOE's evaluation of Student assessed him in all areas of suspected disability and was in conformance with the legal requirements of an appropriate evaluation. Student's Mother testified that she agreed that the results captured Student's levels of performance in pre-academic, OT, and PT. The credible evidence, both

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<sup>7</sup> Occupational Therapist's evaluation report was entered into evidence but she did not testify at the hearing. At the outset of the hearing, the parties agreed that BOE granted Student's Mother's request for an OT IEE and requested that this issue be withdrawn. The OT evaluation is considered for purposes of determining whether BOE's evaluation covered all suspected areas of disability and whether the totality of the evaluation was appropriate.

testimony and documentary, supports a finding that BOE's evaluation of Student was appropriate and in compliance with 34 CFR § 300.304.

**II. If the answer to Issue 1 is in the negative, is Student entitled to an Independent Educational Evaluation for physical therapy, pre-academic, and speech and language therapy at public expense?**

The answer to Issue One is not in the negative so Student is not entitled to an Independent Educational Evaluation for physical therapy, pre-academic, and speech and language therapy at public expense.

**FINAL DECISION AND ORDER**

1. The Board of Education's physical therapy, pre-academic, and speech and language therapy evaluations of Student were appropriate.
2. Based on the determination as to Issue One, Student is not entitled to an Independent Educational Evaluation for physical therapy, pre-academic, and speech and language therapy at public expense.