

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Enfield Board of Education v. Student

Appearing on behalf of the Parents: Parents *Pro se*

Appearing on behalf of the Board: Christine Chinni  
Chinni & Meuser, LLC  
One Darling Drive  
Avon, CT 06001

Appearing before: Kelly Moyher, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Are the Board’s evaluations appropriate?
2. Are Parents entitled to an independent educational evaluation (“IEE”) at public expense?

**PROCEDURAL HISTORY:**

The Board filed the Due Process Complaint/Hearing Request on October 29, 2018. The Hearing Officer was appointed, after a reassignment of the matter, on November 30, 2018. A Prehearing Conference took place on December 5, 2018 and a hearing was scheduled for January 3, 2019.

The hearing convened on January 3, 2019. The Parents did not submit any exhibits to the Hearing Officer or provide any witnesses, although the mother testified when questioned by the Hearing Officer, which is addressed further in this Decision.

The Board presented the testimony of three witnesses. They were Jacqueline Cahillane, Speech and Language Pathologist, Deborah Del Coro, Occupational Therapist, and Heather Fleming, Psychologist. The Board entered Exhibits 1-9 in support of its due process complaint.

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 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 filed a Due Process Complaint to defend its evaluations of an elementary school student. Evaluations were reviewed at a PPT. The Parents did not disagree with the results of the Board's evaluations at the October 22, 2018 PPT, but requested an independent educational evaluation via letter to Eli Whitney School Principal, Maureen Sampl on October 29, 2018. The Board filed a Due Process complaint to establish whether or not the triennial evaluations they performed on the student were appropriate and whether the parents were entitled to an IEE at Board expense.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§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 November 19, 2009 and is a 4<sup>th</sup> grade student at the Eli Whitney Elementary School at the time of this decision. The academic record shows that the Student was referred to Birth to Three services at eighteen months of age due to a delay of reaching age-appropriate milestones. She was found eligible for services and was placed in an autism-specific program at that time. In October of 2015, triennial evaluations were performed and the Student was found to be eligible for special education services as a student with a Speech or Language Impairment. (B-8)
2. As part of the Student's triennial evaluation the Board conducted a speech and language evaluation, an occupational therapy evaluation and a psychoeducational evaluation in September and October of 2018. (B-1, B-2, B-3) The parent expressed concern in the Multi Disciplinary Report for Students Suspected of Having a Specific Learning Disability dated October 15, 2018, that the Student does not put forth effort on tasks and rushed through tasks and is not working to her full ability. (B-4, Pg. 7 of 20)
3. At a PPT meeting on October 22, 2018 the evaluations were reviewed to determine the Student's eligibility for special education and related services. (B-4)
4. At the PPT meeting, the team looked at the findings of Jacqueline Cahillane, Speech and Language Pathologist. Ms. Cahillane is certified by the State, has been employed as a Speech and Language pathologist for over ten years and has conducted hundreds of evaluations. She has a bachelor's degree in psychology and neuropsychology and a master's degree in communications disorders with a special concentration in autism. (Testimony of J. Cahillane)
5. Ms. Cahillane conducted several assessments as part of the Student's triennial review. Ms. Cahillane administered the Clinical Evaluation of Language Fundamentals ("CELF")

because it is a norm-referenced standardized assessment in receptive and expressive language which is useful in diagnosing speech disorders, focuses on clinical behaviors, and provides information on a student's strengths and weaknesses. Ms. Cahillane also administered the Structured Photographic Expressive Language Test, ("SPELT-3") an additional test of syntax and grammar, because the CELF had revealed some errors in these areas. Ms. Cahillane also administered the Expressive Vocabulary Test ("EVP-3") because it is a norm-referenced test of expressive language, the Peabody Picture Vocabulary Test ("PPVT-4), because it is a norm-referenced test of receptive language, a good companion test to the EVP-3, and correlates closely with I.Q., and the Goldman Fristoe Test of Articulation ("GFTA-3") to the Student, because it is a norm-referenced test that allows review of sound substitution and current speech sound production. Ms. Cahillane also administered Social Language Development Test ("SLDT"), because it is a norm-reference test of social skills and pragmatics for students aged 6 to 11. (B-1, Test. J. Cahillane)

6. The Student generally performed in the average range in all of the evaluations performed by Ms. Cahillane. Any deviations from average scores on these evaluations, which were very few, were not clinically significant and were deviations of only a few points below or above average. For example, on the Goldman Fristoe Test of Articulation, the Student received a score of 83, which was just below the normal range of 85 and 115. The Student was observed to substitute /d/ for voiced /th/ (Mudder/Mother) and /f/ for voiceless /th/ fum/thumb in word positions. However, because the Student's speech is completely intelligible, Ms. Cahillane determined that mild sound substitution did not have an adverse impact on the Student's education. Based on the results of the assessments performed, Ms. Cahillane determined the Student no longer met the criteria as a student with a speech or language impairment according to the American Speech-Language-Hearing Association (ASHA) guidelines and State of Connecticut guidelines. (B-1, Test. J. Cahillane)
7. In addition to the Speech and Language evaluation, Ms. Deborah Del Coro, an occupational therapist employed by the Board, conducted occupational therapy evaluations. Ms. Del Coro has a bachelor's degree in drama and a master's degree in occupational therapy. She is a member of the National Occupational Therapy Association, is certified by the National Board for Certification in Occupational Therapy and holds licenses as an occupational therapist in New York and Connecticut. Ms. Del Coro has 24 years of experience as an occupational therapist. (B-3, Testimony D. Del Coro)
8. Ms. Del Coro used two instruments to evaluate the Student in the area of handwriting, which has been the only area of concern communicated by the both the Parents and school professionals. Ms. Del Coro in administering the Beery Buktenica Developmental Test of Visual Motor Integration, was looking at measuring visual motor integration. The Student's scores on the BBDTVMI were in the average range. Ms. Del Coro also administered the VMI Developmental Test of Motor Coordination and the VMI Developmental Test of Visual Perception. These tests break down the skills required for handwriting more than the BBDTVMI. The results of the Student's performance, as reported by Ms. Del Coro via her written report and testimony at hearing, show the Student to be performing in the average range or having skills that were age-appropriate. Ms. Del Toro reported that the Student's

teacher reported no concerns in the areas assessed and determined occupational therapy services were no longer recommended. (B-3, Test. D. Del Coro)

9. Ms. Heather Fleming, conducted the psychoeducational evaluation of the Student and utilized several instruments. Ms. Fleming holds a bachelor's degree in biology and psychology, a master's degree in psychology, and a sixth-year certificate in psychology. She is a member of the National Board of School Psychologists, holds national certification, and certification from the State of Connecticut Department of Education. (B-2, Testimony H. Fleming)
10. Ms. Fleming administered the Wechsler Intelligence Scale for Children, Fifth Edition ("WISC-V"). The WISC-V is designed to determine an individual's cognitive ability and intellectual functioning, and is a standardized, age-appropriate, norm-reference I.Q. test. The Student scored in the average to high average range on this evaluation. Ms. Fleming also administered the Wechsler Individual Achievement Test ("WIAT-III"), which is a standardized, norm-referenced assessment designed to measure the subject's academic skills utilizing a wide variety of subtests in the areas of reading, writing and math. The Student's performance was in the average range on this test. Ms. Fleming administered the Behavior Assessment System for Children ("BASC-III"), which has the Student's teacher and the Parent(s) fill out rating scales, and conducts the BASC student interview with the Student. This test aims to gain understanding of the Student's behaviors and emotions at school, at home and in the community. (B-2, Test. H. Fleming)
11. On this test, the Parent identified the areas of hyperactivity, adaptability and functional communication as areas of concern. However, the Student's teacher did not identify any areas of concern in any of the evaluated areas on this test. (B-2, Test. H. Fleming). I asked the mother about her responses to the parent portion of the BASC interview regarding hyperactivity. The student's mother described her daughter as being highly energetic from morning until bedtime and the need for the Student to be enrolled in several after school activities to keep her busy. I asked the mother if she noticed her daughter engaging in any fidgeting behaviors both during moments of high energy and moments of relative calm or when she is engaged in an activity. The mother testified that she did not notice any fidgeting or other self-stimulating or calming behaviors. (Testimony Mother)
12. Observations were conducted in the classroom. Ms. Fleming noted that the Student's desk was organized and she attended to the class lesson and worked independently through activities. The Student's classroom teacher provided that she occasionally supports the Student with writing, more specifically, when completing inferential pieces. (B-2)
13. Ms. Fleming also administered the Autism Spectrum Rating Scale ("ASRS"), because in her review of the file, she noted that autism had been a concern in the past. Although the parent identified several areas of concern on the ASRS, the teacher scored the Student as mildly elevated in just one subarea, and there was no evidence of an adverse impact on the Student's education. Based upon the results of all of the components of her evaluation of the Student, Ms. Fleming did not find evidence of a disability that would qualify the Student for special education and related services in the areas of autism or specific learning disability in any

area. She made recommendations for continued good teaching practices applicable to all students. (B-2, Test. H. Fleming)

14. The Team discussed all of the findings of the evaluations performed by Jacqueline Cahillane, Deborah Del Coro, and Heather Fleming and determined the Student was no longer eligible for Special Education or Related Services in any area and was to be exited from special education. Neither school personnel or the parents disagreed with this recommendation at the PPT meeting of October 22, 2018. (B-4)
15. On October 29, 2018, the Parent sent a letter to the Eli Whitney School Principal, Maureen Sampl, requesting an independent education evaluation (IEE). The Parent did not provide any reason for this request in her letter. (B-5)
16. The Due Process Hearing was requested by the Board and was duly noticed to all parties.

### **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. §1414(a)(2)(B)(ii); 34 C.F.R. §300.305(a)(2)(1)(B)(iv), R.C.S.A. Sec. 10-76d-9.
2. 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. § 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. § 300.502; R.C.S.A. Sec. 10-76d-9(a)
3. The IDEA only requires "the door of public education [to] be opened for a disabled child in a 'meaningful' way." *Walczak v Florida Union Free School District*, 27 IDELR 1135, 142 F.3d at 130 (2d Cir 1998), *citing Rowley, supra*. However, it does not guarantee "everything that might be thought desirable by loving parents." *Id.* at 132. An "appropriate" reevaluation is one that complies with IDEA and Connecticut regulations to produce information Student's relevant functional, developmental, and academic skills to determine whether the student continues to be eligible for special education services and to determine to provide any necessary updates to the student's IEP. 34 C.F.R. §300.301-§300.305; R.C.S.A. Sec. 10-76d-9.
4. 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. §1414(a)(2)(B)(ii); 34

C.F.R. §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).

5. IDEA regulations provide standards for the manner in which evaluations are to be conducted. These standards are set forth in 34 C.F.R §300.300 to 34 C.F.R. §300.311. Connecticut state regulations implement IDEA regulations in R.C.S.A. Sec. 10-76d-9(a).
6. The evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent. The tools used must be nondiscriminatory on a racial or cultural basis and be administered in a language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally and be geared to providing relevant information to assist in determining the educational needs of the child. 20 U.S.C. §1414(a)(2)(B)(ii), (3)(A)(i-ii); 34 C.F.R. §304; R.C.S.A. Sec. 10-76-9(a)
7. 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. §300.304(b)(1) and (2) and (c)(iv); R.C.S.A. Sec. 10-76-9(a).
8. The instruments used for assessments must be technically sound and may be used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. See 34 C.F.R. §300.304(b)(3). "Technically sound instruments generally refers to assessments that have been shown through research to be valid and reliable." 34 C.F.R. § 300.304 *Comments* (2006).
9. The chosen assessments must be tailored to assess specific areas of educational need of the child and not merely those that are designed to provide a single general intelligence quotient. See 34 C.F.R. §300.304(b)(2).
10. 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. §300.304(c)(3).
11. The child should be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 24 C.F.R. §300.304(4).
12. Applying the IDEA and Connecticut regulations cited above, this Hearing Officer finds that the evaluations performed on the Student were appropriate for the following reasons:

13. In compliance with the IDEA, evaluations of the Student were conducted by Ms. Jacqueline Cahillane, Deborah, Del Coro, and Heather Fleming, certified and licensed professional and evaluators who were 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. §300.304(b)(4). *Findings of Fact*, No. 4, 7, and 9.
14. 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. §300.304(b)(1) and (2); 34 C.F.R. §300.304(c)(2) and (3). *Findings of Fact*, No. 5, 8, 10, 12 and 13.
15. All three Board employees who evaluated the Student are experienced professionals who are 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. §300.304(c)(1)(iv) and (v). *Findings of Fact*, No, 4,7 and 9.
16. The testing instruments are widely recognized as technically sound instruments, 34 C.F.R. §300.304 (b)(3) and 34 C.F.R. §300.304(c)(3) as are the chosen assessments. *Findings of Fact*, No. 5, 8, 10, and 13.
17. The results of the assessments were used to determine whether the Student remained eligible for special education services. *Findings of Fact*, No. 14.
18. The Board's evaluations were in compliance with 34 C.F.R. §300.301- 305 and R.C.S.A. Sec. 10-76d-9(a).

**FINAL DECISION AND ORDER:**

1. The Board's evaluations were appropriate.
2. The Parents are not entitled to an IEE at public expense.