

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Fairfield Board of Education v. Student

Appearing on behalf of the Parent:

Andrew Feinstein, Esq.  
86 Denison Avenue  
Mystic, CT 06355

Appearing on behalf of the Board:

Carletha Texidor, Esq.  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, CT 06460

Appearing before:

Sylvia Ho, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the Board's psychoeducational evaluation 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 April 9, 2014. A Prehearing Conference was conducted on April 24, 2014. The hearing convened on May 19, 2014 and May 28, 2014. On May 19, 2014, the Hearing Officer granted the parties' request to extend the mailing date of the Final Decision from May 23, 2014 to June 20, 2014 to add the May 28, 2014 hearing date. On May 28, 2014, the Hearing Officer granted the parties' request for an extension of the mailing date of the Final Decision to July 11, 2014 in order for the parties to submit briefs. Both parties submitted proposed findings of fact and briefs on June 16, 2014.

The Board presented the testimony of three witnesses. They were Laena DeMelo, Riverfield Elementary School Psychologist; Sarah Schilling, Riverfield Elementary Special Education Resource Room Teacher and Denise Moore, Riverfield Elementary School Speech and Language Pathologist. The Parents presented three witnesses. They were Dr. Michael Cohen, a Neuropsychologist; Laurie Markus, Parent Advocate and the Parent. The Board submitted as full exhibits B-1 through B-118. The Parent submitted as full exhibits P-1 through P-12. The Board's Due Process Complaint/Hearing Request was admitted as HO-1. During the course of the hearing, the Hearing Officer requested that the Board produce copies of the Stanford Binet Intelligence Scale-Fifth Edition (2003) scoring table and instructional material to the examiner. The Board provided a

copy of the scoring table, instructions to examiner and answer keys to the Hearing Officer and Parent's attorney on June 11. This material was admitted on the record with answer key information redacted as HO-2.

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:**

At a triennial reevaluation review to determine Student's continuing eligibility for special education services and provide updates to Student's IEP, the Parent disagreed with cognitive testing results in the psychoeducational evaluation report and asked for an independent educational evaluation. The Board brought the Due Process Complaint/Hearing Request to defend its psychoeducational evaluation under 34 C.F.R. §300.502(b)(2)(i) and R.C.S.A. Sec. 10-76d-9.

### **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 submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on February 7, 2006 and was attending the first grade at Riverfield Elementary School at the time of the hearing. Student has a medical diagnosis of Congenital Myopathy and a complicated medical history. As of March 2014, he is eligible for special education services under the category of Multiple Disabilities. (Testimony, Parent, Exhibit B-108)
2. Student's family moved to Fairfield, Connecticut from another state. Prior to moving to Fairfield, he was identified being eligible for services under the category of Developmental Delay (3-5). Student began receiving special education services in Fairfield after enrolling at the Board's preschool, the Early Childhood Center (ECC). (Testimony, Parent, Exhibit B-7)
3. In 2011, when Student was age four years and nine months, the ECC staff conducted a reevaluation review to determine continuing eligibility for special education

- services and to prepare for the Student's transition to kindergarten and develop a new individualized education program (IEP) for the coming school year. (Exhibit B-7)
4. As a part of the reevaluation review process, the ECC staff conducted a number of evaluations, including a psychoeducational evaluation. The psychoeducational evaluation was conducted by the ECC School Psychologist and included a cognitive testing by the Stanford-Binet Intelligence Scale, Fifth Edition 2003 (SB-5) in which Student earned a Full Scale IQ (FSIQ) score of 91. As a result of the review process, Student's category of disability was changed to Other Health Impairment (OHI) due to the impact of Congenital Myopathy on Student's learning and development. (Exhibits B-5-B-13).
  5. In April 2013, a Riverfield Elementary School Planning and Placement Team (PPT) met to plan for triennial reevaluation in May 2014. The PPT participants at this meeting included the Parent, her Parent Advocate, the regular and special education teachers, the School Psychologist, two occupational therapists, two physical therapists, the school nurse and a school administrator. (Exhibit B-67).
  6. The school-based members of the PPT discussed Student's progress and presented written reports of Student's program and made recommendations. Parent provided information about Student's medical status and recent surgery. The PPT discussed and recommended the assessments that would be administered. Parent requested that the triennial reevaluations be done sooner than May 2014. (Exhibits B-67-B-68)
  7. The PPT recommended and Parent agreed to the following evaluations. The PPT agreed that no special accommodations or adaptations for student's language, cultural background or physical status were required to administer these evaluations:
    1. An evaluation by the occupational therapist consisting of standardized assessment and clinical observation of Student's sensory processing, fine motor, visual motor and visual perception functioning.
    2. An evaluation by the physical therapist consisting of standardized assessment and clinical observation of Student's gross motor functioning.
    3. An evaluation by the speech and language pathologist consisting of standardized assessment of Student's speech articulation, pragmatic, expressive and receptive language.
    4. An evaluation by the special education teacher consisting of curriculum based and standardized assessments of Student's reading, writing and math.
    5. An evaluation by the School Psychologist consisting of behavior rating scales and one to one standardized assessment of Student's attention, social, adaptive behavior and cognitive skills. (Exhibit B-68).
  8. The various professionals conducted their assessments and observations from October 2013 to January 2014 and compiled evaluation reports. (Exhibits B-91, B-93, B-96, B-97, B-99, B-101-106)
  9. The School Psychologist who conducted the psychoeducational evaluation holds a Bachelor of Science degree in Psychology, a Masters of Science in School Psychology and a Sixth Year Diploma in School Psychology. She is certified by the Connecticut Department of Education as a school psychologist, and she has worked as a school psychologist for nearly twenty years and has worked in the school district for nearly eighteen years. (Testimony, L. DeMelo, Exhibit B-116)

10. The School Psychologist's psychoeducational evaluation was conducted over the period of October 2013 to the end of January 2014. Her evaluation included classroom observations and standardized assessments. She administered the Wechsler Intelligence Scale for Children-IV (WISC-IV), Children's Memory Scales (CMS), Vineland Adaptive Behavior Scales, Conners 3, and Social Responsiveness Scale-2. These assessments covered the areas of general intelligence, cognition, everyday communication, social and practical behaviors, attention and hyperactivity, conduct disorders and oppositional defiance disorders, executive functioning and memory. The psychoeducational evaluation also included information from the Parent and the Student's regular education and special education teachers about Student's behavior at home and in the classroom. (Testimony, L. DeMelo, Exhibit B-93)
11. Student's WISC-IV FSIQ score results showed a dramatic decline in functioning. The WISC-IV is a widely recognized and commonly administered intelligence assessment. Whereas, Student scored a FSIQ score of 91 in 2011, a score in the average range, Student's WISC-IV FSIQ score was 56, in the extremely low range. (Testimony, DeMelo, Exhibits B-7, B-93).
12. To ensure the accuracy of the IQ score results, the School Psychologist performed a second intelligence test, the Stanford Binet Intelligence Scale, Fifth Edition (SB-5); another widely recognized and commonly administered assessment. The School Psychologist decided to use the SB-5 because it was the same intelligence-testing instrument that yielded the 91 FSIQ score in the 2011 psychoeducational evaluation. She thought she would be comparing "apples to apples". The SB-5 assessment also provides accurate results for persons with verbal or motor impairments. One of the unique features of the SB-5 is its ability to consider the motor difficulties of the person taking the assessment. If a person taking the assessment cannot complete the nonverbal components of the assessment, which used manipulatives, then the verbal IQ can be a stand-alone as a representation of a FSIQ. Student's FSIQ score on the SB-5 was 56, identical to the FSIQ score for the WISC-IV. (Testimony, L. DeMelo, Exhibit HO-2).
13. On March 7, 2014, the School Psychologist met to discuss the results of her psychoeducational evaluation with the Parent. The Parent expressed surprise over the significant drop in intelligence testing results. The Parent asked whether the results meant that the Student had an intellectual disability. She was upset about receiving the news. She asked the School Psychologist whether the Student would be categorized as "intellectually disabled". The School Psychologist said "no", and that she thought the best description would be the category of "Multiple Disabilities" based on the Student's medical conditions. The Parent asked the School Psychologist what would occur with Student's IEP. The School Psychologist stated that the PPT would discuss this and that the PPT would provide ways for which the Student could be prompted with information and provided suggestions for the development of the IEP. The Parent requested changes to reflect that Student was suffering a facial rash on the first assessment session in October 2013. (Testimony, L. DeMelo, Testimony, Parent)
14. On March 12, 2014, the PPT met to discuss the Student's triennial reevaluation results; to determine continuing eligibility for special education services; conduct an

annual review and to develop a new IEP. In attendance were Student's special education and regular education teachers, occupational therapist, physical therapist, speech and language pathologists, physical education teacher, a school administrator, the Parent and a Parent Advocate. The members of the PPT reviewed the evaluations and reports and agreed that Student continues to be eligible for special education services. All the members of the PPT agreed that the Student's eligibility classification should be changed to "Multiple Disabilities". Based upon the cognitive testing, the School Psychologist recommended additional modifications to Student's IEP, such as "shortening tasks" and "templates for written work" and affirmed other recommendations already included in the Student's IEP such as eliminating visual clutter and including organizational goals. (Testimony, DeMelo, Testimony, Schilling, Testimony, Moore, Testimony, Parent, Exhibit B-108).

15. The Parent and her advocate disagreed with the results of the intelligence testing. The School Psychologist stated that the second intelligence test (SB-5) was conducted to confirm the results of the first intelligence testing (WISC-IV). She stated that the cognitive scores, memory testing and adaptive behavior results were all consistent. The School Psychologist stated that the cognitive results were not driving the IEP goals and objectives but would give input on strategies. (Testimony, Parent, Exhibit B-108)
16. The school team members stated that they believed that they had sufficient relevant information to determine eligibility to receive special educational services and update Student's IEP. The school team offered to conduct further testing which the Parent refused. Parent requested an independent educational evaluation at public expense. (Testimony, L. DeMelo, Testimony, Parent, Testimony, L. Marcus, Testimony, D. Moore, Testimony, S. Schilling, Exhibit B-108)
17. On March 23, 2014, the Board's Coordinator of Special Education notified the Parents that the Board intended to file a Due Process Complaint/Hearing Request to defend the School Psychologist psychoeducational evaluation unless the Parent withdrew the request for an independent educational evaluation. The first paragraph stated as follows:
 

"As you know, at the PPT meeting on March 12, 2014, the school reviewed the results of its triennial evaluation which included a psychological evaluation. You indicated during the meeting that you disagreed with the cognitive testing and were requesting an independent educational evaluation (IEE) in this area. The request was denied by the PPT, since the school based members of the PPT believed that the school's testing was appropriate and valid." (Exhibit B-111)
18. On March 28, 2014, the Parents responded to the Board. The Parents' letter stated, in pertinent part, as follows:
 

"We write to correct the erroneous statement in the first paragraph of your letter. We assert that Fairfield has failed to conduct a comprehensive evaluation of [student] by limiting its work to a cognitive assessment. [Student] needs a neuropsychological evaluation so that we can understand the discrepancies between his recent scores and his scores three years ago, to explore the nature and character of his learning, and to identify appropriate interventions to permit [student] to make meaningful educational progress. Whether or not Laena DeMelo correctly administered the test she gave is not the central issue. And her

- offer to conduct further testing is not helpful because she lacks expertise to conduct a full-scale neuropsychological evaluation.” (Exhibit B-112)
19. After the PPT meeting, the Parent retained a neuropsychologist to conduct a neuropsychological evaluation of Student. The Parent had been considering having a neuropsychological evaluation of Student prior to the March 12, 2014 PPT. Parent and Student’s neurologist had been discussing the possibility of having a neuropsychological evaluation after the Student reached school age. (Testimony, Parent)
  20. The Neuropsychologist testified at the hearing and challenged the validity of School Psychologist’s 2014 intelligence testing. There was no challenge of the 2011 results. Those higher results were assumed to be accurate. Parent, Parent Advocate and the Neuropsychologist all testified that the intelligence testing results would lead to a labeling or stigma of Student as being intellectually disabled, notwithstanding the Student’s current category of Multiple Disabilities. Parent and Parent Advocate speculated that the intelligence testing reduced academic expectations. There is no support in the educational record for this testimony. Although it is true that Student’s math goals were revised and expectations reduced, it was because Student had been struggling in math. Contrary to Parent and Parent Advocate’s belief that vocabulary expectations in Student’s IEP were reduced, they were actually increased from 10 vocabulary words previously to 24 vocabulary words per quarter after the triennial review. Parent and Parent Advocate had misread these portions of the IEP in coming to their conclusion. (Testimony, M. Cohen, Testimony, Parent, Testimony, L. Markus Exhibits B-88, B-108)
  21. The Neuropsychologist testified that Student’s poor fine motor control handling of manipulatives would make the School Psychologist’s results unreliable. The Neuropsychologist also testified that the Student’s mood may have affected the reliability of the cognitive testing results because of the School Psychologist’s reported that during the first test session, the Student was unhappy initially with having to switch rooms. The Parent testified that the Student had a facial rash on the day of the first test session and this may have affected the Student’s performance. (Testimony, M. Cohen, Testimony, Parent)
  22. After reviewing all of the testimonial and documentary evidence in the record, this hearing officer is not persuaded by this testimony.
  23. With respect to the issue of unreliability caused by motor control issues, there are several reasons why this would not be true. First, Parent testified that the Student’s motor skills were the same or slightly improved. This evidence in the record suggests that the 2013-2014 motor skills were the same if not better than motor skills in 2011 so that motor control would not have been a differentiating factor.
  24. Second, the School Psychologist did not report problems with motor control in her psychoeducational evaluation report. In fact, the School Psychologist testified that Student had no problems with manipulation during testing.
  25. Third, Student’s nonverbal responses with manipulatives were a relative strength compared to Student’s verbal responses. The examiner of the 2011 SB-5 observed that “[g]enerally, [Student] was most easily engaged with activities that involved objects to manipulate accompanied by demonstrations of the tasks when needed, than

- by tasks that were primarily based on verbal directions and required verbal output.” (Exhibit B-7)
26. Fourth, testing results show that Student scores in the non-verbal subtests were equal to or higher than the verbal subtest. In other words, Student had equal difficulty with verbal responses as with those requiring use of manipulatives. (Exhibit B-93)
  27. Fifth, the psychoeducational evaluation report gives specific examples and descriptions of Student in the testing environment. It is apparent that despite efforts by the School Psychologist to cue or prompt correct verbal responses after a wrong answer, the Student was annoyed and resistant. The Student would say that he already answered the question. The Student verbal IQ score, which is supported by detailed descriptions, is consistent with the nonverbal IQ score.
  28. Finally, the SB-5 allows the examiner to discard testing results when motor issues present in the test environment. The motor issues did not present as problems in testing sessions. Even if the nonverbal section of the SB-5 had been discarded, the Student’s FSIQ score on the SB-5, taking into account only the verbal section, would have been about the same score. This consistency of nonverbal and verbal results leads this Hearing Officer to reject the “motor issues” theory of unreliability. (Testimony, M. Cohen, Testimony, L. DeMelo, Testimony, Parent, Exhibits B-7, B-93).
  29. The Neuropsychologist also challenged the accuracy of the WISC-IV and the SB-5 by suggesting that Student’s negative mood could have affected the results. In the psychoeducational report, the School Psychologist had reported that Student wanted to be tested in the first room because that was the room with toys and other items for play. The Parent also testified that Student was suffering from a facial skin rash during the first session and suggested that this might have affected Student’s performance. (Testimony, M. Cohen, Testimony, Parent)
  30. Again, this Hearing Officer is not persuaded by this testimony after a review of all of the evidence in the record. First, the School Psychologist testified that the Student acted appropriately and was attentive and attending to tasks during the testing sessions. She did not notice that anything was bothering the Student. (Testimony, L. DeMelo)
  31. Second, these cognitive assessments were done over three sessions over the course of a few months. Any negative mood because of the switching of rooms or skin rash in the first session would not have affected the Student’s performance in the other sessions. (Testimony, L. DeMelo, Exhibit B-93)
  32. Third, the SB-5 was given to the Student in a later session after the School Psychologist had had an opportunity to review the WISC-IV results. Had the issues of mood affected WISC-IV results, the SB-5 would have revealed a different outcome; but this was not the case. (Testimony, L. DeMelo)
  33. Fourth, that the mood issue could not be a factor in reliability is clear when one reviews observations of the Student’s behavior in the 2011 psychoeducational report. In 2011, the Student had the same problems adjusting to the test environment. The ECC examiner noted, “[Student] initially warmed after only a brief period, but soon realized that I was going to expect him to participate in structured exchanges that would require his full participation. He began to whine, turn about in his chair, and stamp his feet.” Despite this bad mood, Student’s scored a full-scale IQ of 91. This

suggests that Student's initial mood should not have been a factor in the accuracy and reliability of 2013-2014 cognitive testing. (Exhibit B-7)

34. This Hearing officer finds persuasive evidence in the record that supports a finding that the School Psychologist's cognitive testing results were reliable and valid. First, Student's FSIQ was identical on two different assessments (WISC-IV and SB-5) that were given at different times. (Exhibit B-93)
35. Second, results in various subtests of the SB-5 and WISC-IV were consistent with results of other assessments such as for Student's functioning in memory between the SB-5, WISC-IV and CMS. (Exhibit B-93)
36. Third, the psychoeducational report details Student's behavior and use of syntax in responding to simple questions that demonstrated sub average responses for someone of his age. The consistency of all of this evidence points to a conclusion that the cognitive testing was valid and reliable. (Exhibit B-93)
37. Finally, this Hearing Officer finds the School Psychologist's testimony to be convincing and supported by the evidence. The School Psychologist testified that she was concerned enough about the accuracy and reliability of the first intelligence test to administer a second test. She performed the identical 2011 test to "compare apples to apples". She was personally engaged in obtaining an accurate result and looked for a reason why the IQ score would have declined so dramatically. When asked by this Hearing Officer about the reason why she believed the Student's IQ score would have dropped so dramatically, the School Psychologist testified that the demands on the Student increased from 2011 to 2014 and that the number of correct answers required increase as a child moves from preschool age to elementary school age. A review of the SB-5 test producer's instructions and scoring tables confirms the School Psychologist's testimony. The number of questions and correct answers required for the 91 IQ score at age four years and nine months are far fewer than that required of Student at seven years and eleven months. In fact, it appears from the test producer's scoring tables that Student was able to produce correct answers, but far fewer than that expected of an average student of the same age. Therefore, the Hearing Officer concludes that the psychoeducational evaluation results were valid and reliable. (Testimony, L. DeMelo, Exhibits B-7, B-93, HO-2).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1401, et seq.
2. To ensure every child receives a free and appropriate public education as required by the IDEA, each eligible child must have an Individual Education Program ("IEP"). An IEP must include: (1) a statement of the child's levels of academic achievement and functional performance, (2) measurable annual goals, (3) a description of how progress will be measured and when progress reports will be provided, and (4) a statement of the special education services and supplementary aids to be provided. 20 U.S.C. § 1414(d)(1)(A); see 34 C.F.R. §300.320(a).
3. The IEP must 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 at 206-07 (1982). An IEP need not maximize the potential of a



disabled student, because Congress did not intend the IDEA to guarantee a specific outcome, but to provide a basic level of educational opportunity. *Rowley*, 458 U.S. at 192, quoting S. Rep. No. 94-168, at 11 (1975).

4. 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(a).
5. 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).
6. 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 on 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(a).
7. 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).
8. 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).
9. This 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).
10. 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).
  11. 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).
  12. 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).
  13. 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).
  14. 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).
  15. Applying the IDEA and Connecticut regulations cited above, this Hearing Officer finds that the Psychoeducational Evaluation was appropriate for the following reasons, set forth below.
  16. In compliance with the IDEA, an evaluation study of Student was conducted by 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 Parent 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. 8, 9, 10, 11, 12 and 14).
  17. 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 Student's functional physical, gross and fine motor, medical and developmental 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. 7, 8, 10, 12, 14)
  18. The School Psychologist is an experienced professional who is a trained and knowledgeable and appropriately certified or/licensed to conduct the general intelligence tests. She administered the assessments in accordance with the test

- producer's instructions. 34 C.F.R. §300.304(c)(1)(iv) and (v). (Finding of Fact No. 9)
19. The testing instruments, WISC-IV, SB-5, CMS, Vineland Adaptive Behavior Scales, Conners 3, and Social Responsiveness Scale-2 are widely recognized as technically sound instruments. Although the Student has gross and fine impairments, the School Psychologist selected and administered the SB-5 so as best to ensure that the assessment is administered in a way that the results accurately reflect the Student's intelligence level. 34 C.F.R. §300.304 (b)(3) and 34 C.F.R. §300.304(c)(3) (Findings of Fact No. 10, 12 and 28)

**FINAL DECISION AND ORDER:**

1. The Board's psychoeducational evaluation was appropriate.
2. The parents are not entitled to an 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

Sylvia Ho  
Hearing Officer      Name in Print