

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Fairfield Board of Education v. Student

Appearing on behalf of the Board:

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Appearing on behalf of the Student:

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Appearing before:

Attorney Mary Elizabeth Oppenheim,
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Whether the Board's triennial evaluation of the Student is appropriate.

SUMMARY:

The Board conducted a triennial reevaluation of the Student, which was reviewed at a Planning and Placement Team (PPT) meeting in February 2011. One year after the triennial reevaluation was reviewed at the PPT meeting the Parents requested an independent educational evaluation (IEE) of the Student during a PPT meeting. The Board brought this action to defend the appropriateness of its triennial reevaluation.

PROCEDURAL HISTORY:

The Parents received this request for hearing on February 27, 2012 [H.O.-1] and prehearing conferences convened on March 5 and 9, 2012. Requests for extensions of the mailing date of the decision were granted to allow for scheduling of additional hearing dates at the request of the attorneys for both parties.

The hearing convened on four hearing dates: April 26, May 29, June 11 and June 26, 2011 and closing argument was presented by both parties on the last day of hearing.

The Board's witnesses were Walter Young, Board school psychologist; Linda Bucci, Board speech/language pathologist [SLP]; Peggy DeMaria, retired Board language arts consultant [LA Consultant] and Kimberly Mullen, Board special education teacher [Special Education Teacher].

The Parents' witnesses were the Grandmother, the Mother, the Father and Dr. Sherrill Werblood, psychologist.

The Board submitted Exhibits B-1 through B-99. All of the Board's exhibits were entered as full exhibits.

The Parents submitted Exhibits P-1 through P-20. The Parents withdrew Exhibits P-6 and P-18. The Board's objection to Exhibit P-19 was sustained. At the close of the hearing, the Board's objection to Exhibit P-20 was pending. The Parents' attorney had been instructed that any outstanding objections to exhibits would be sustained if the relevancy of the document was not established. Therefore, the objection to Exhibit P-20 was sustained. The remaining Parents' exhibits were entered as full exhibits.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Conn. Gen. Stat. §10-76h and related regulations, 20 U.S.C. §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedures Act, Conn. Gen. Stat. §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. The Student is 14 years old and has attended the Board schools since age 3, with the exception of time during 2006 and 2007 when she attended schools in Florida and in Westport. [Exhibit B-55]
2. It is undisputed that the Student is eligible for special education under the primary disability of Other Health Impairment. [Exhibit B-97] The Student was diagnosed with Prader-Willi Syndrome at birth, which is related to a genetic error involving chromosome 15. Consistent with this diagnosis, the Student's speech and motor milestones were impacted and delayed relative to normal limits. Also related to Prader-Willi Syndrome, the Student's history indicates she experiences an increased appetite and low metabolism,

which requires monitoring of her food intake and physical activity to promote health. [Exhibit B-79]

3. The Board has conducted evaluations of the Student during the 1999-2000 school year, the 2001-02 school year, the 2004-05 school year, 2006-07 school year, 2007-08 school year and the Parents have participated in the PPT meetings which have planned and reviewed evaluations. [Exhibits B-4, B-12, B-33, B-34, B-38, B-39, B-49, B-50, B-51, B-52, B-56, B-57, B-58, B-59, B-60, B-62, B-64]
4. The PPT convened on February 11, 2010 to conduct an annual review, develop an Individualized Education Program (IEP) and plan the Student's triennial reevaluation. [Exhibit B-72]
5. The Mother signed the Notice and Consent to Conduct a Reevaluation on February 11, 2010, agreeing to the following test/evaluation procedures: individual cognitive test of cognitive ability, behavior checklist of behavior/social/emotional, individual achievement of academic achievement, individually administered tests of receptive and expressive language, information assessment of social communication and projective testing of personality. The evaluators listed on the consent form were the school psychologist, the speech language pathologist [SLP], the language arts specialist and the special education teacher. [Testimony Mother; Exhibit B-83, page 29]
6. The language arts evaluation was conducted on December 1, 2010 by the Board language arts consultant. The consultant administered two norm-referenced tests in her evaluation, the Woodcock Reading Mastery Test-Revised [WRMT-R] and the Test of Written Language – 4 [TOWL-4]. In the WRMT-R, the Student's standard score in word identification was 93, her word comprehension standard score was 82, her passage comprehension standard score was 75 and her total reading score was 86. The Student's score in word identification was in the average range, the word comprehension was in the below average range and the passage comprehension was in the well below average range. Her total reading score was within the average range. The Student's standard scores from the TOWL-4 were a 75 on the contrived writing and an 84 on the spontaneous writing with an overall writing standard score of 76, in the poor range. The tests were conducted in accordance with the publisher's instructions and the consultant was appropriately trained to administer and interpret the results. The consultant identified recommendations based on her evaluation, which were shared in the PPT meeting and listed at the conclusion of her written evaluation. [Testimony LA Consultant, Exhibit B-72]
7. The Student's triennial reevaluation also included a speech and language evaluation. A hearing screening was conducted in which the Student passed a hearing screening bilaterally. An observation was completed of the Student in her reading class, and the evaluator considered teachers' reports in her evaluation. [Testimony SLP, Exhibit B-8]
8. The SLP administered three tests as part of the speech/language evaluation, the Clinical Evaluation of Language Fundamentals – 4 (CELF-4), the Peabody Picture Vocabulary

Test-4 (PPVT-4) and the Word Test-2 Adolescent. The results of the CELF-4 found the Student's overall general language skills to be below the average. She received a core language score of 66 and her overall receptive language skills also fell below the average range with a receptive language index of 66. Her expressive language index fell below the average range with a standard score of 66, her language content index score of 67 was below the average range and her language memory index was below the average range at a standard score of 62. The Student's standard score on the Word Test-2 Adolescent was a total test score of 66, below the average range. In the PPVT-4, the Student was assessed a single word receptive vocabulary test and earned a standard score of 95, within the average range. [Testimony SLP, Exhibit B-8]

9. The SLP concluded that the Student's significant needs in the areas of receptive, expressive and pragmatic language impact her ability to access the general education curriculum without specialized instruction and supports. The SLP used technically sound measurements which yielded accurate information about the Student. The SLP shared the recommendations in her report and with the PPT when it convened to discuss the triennial reevaluation. [Testimony SLP, Exhibit B-8]
10. Kimberly Mullen, a board special education teacher, administered the Key Math assessment as part of the triennial evaluation. The results of the Key Math assessment were a standard score of 77 in basic concepts, a standard score of 92 in operations, a standard score of 81 for applications and a total test composite standard score of 81. The scores in basic concepts, applications and in the total test composite were below average, and the operations score was within the average range. The Key Math assessment was selected as it is a comprehensive math assessment that provides detailed information in a variety of areas of math and was an appropriate instrument to obtain information about the Student's strengths and weaknesses. The results were consistent with the evaluator's experience with the Student in that she has strengths in computation and rote skills, but has more difficulty in applications and higher level thinking skills. [Testimony Special Education Teacher, Exhibit B-81]
11. The school psychologist conducted his evaluation of the Student in December 2010 and January 2011. As part of the evaluation, the Student was observed in a language arts class and during her testing. The school psychologist administered the Woodcock-Johnson III Tests of Cognitive Abilities (WJ III Cog), the Behavior Rating Inventory of Executive Function (BRIEF) and the Behavior Assessment System for Children (BASC-2). [Testimony School Psychologist, Exhibit B-79]
12. The Student's results on the BRIEF were favorable. The scores on the BRIEF are reported as T-scores, a statistical tool that shows how the Student is performing relative to the peer group, with average scores within the range of 35 to 65. The Student's scores on the BRIEF were: inhibit: 49, shift: 61, emotional control: 61, behavioral regulation index: 58, initiate: 54, working memory: 54, plan/organize: 70; organization of materials: 57; monitor: 70, metacognition index: 64; global executive index: 63. Based on the results of the BRIEF, the Student's executive functioning can be characterized as at age-expected levels on a majority of domains with two areas of concern in

planning/organization and monitoring. [Testimony School Psychologist, Exhibit B-79] These areas of concern in the BRIEF are consistent with the weaknesses which would be seen in a student with Prader-Willi Syndrome. [Testimony Dr. Werblood]

13. The Student's BASC-2 assessment, which included a self-report and teachers' responses, reveal that her behaviors are essentially typical across all measured domains with some concerns related to learning problems, social withdrawal, planning ability and self-monitoring. The student's self-report revealed at-risk levels of difficulty with feelings related to controlling life events and developing satisfactory interpersonal relationships. [Testimony School Psychologist, Exhibit B-79]
14. The Parents did not return their completed BASC-2 and BRIEF checklists to the school psychologist. [Testimony School Psychologist, Exhibit B-79] The testing documents may have come home in the Student's backpack, but the Father would sometimes be unaware of papers coming home via the Student's backpack. Even when the Parents became aware of the lack of completion of the rating scales, they did not request that they be provided rating scales to complete. [Testimony Father] Instead, the Parents questioned the selection of the BASC as a testing instrument as they felt it was "hardly the tool to use to update [the Student's] level of needs." [Testimony Mother; Exhibit P-13] The omission of Parents' responses did not invalidate the results of the BASC and the BRIEF. These assessments provided helpful information about the Student's functioning, strengths and weaknesses.
15. The school psychologist administered the most recent version of the Woodcock Johnson Tests of Cognitive Abilities, which is normed on a population which includes the age/grade range of the Student. The school psychologist prefers to use this instrument because it is a very well-constructed test which focuses on discrete and specific areas of cognitive abilities. The Student had previously been administered the WISC IV [Exhibit B-64], but the School Psychologist selected the WJ III Cog as it provides more specificity regarding the cognitive processes that affect learning and it would provide more precise information on the Student's cognitive style. [Testimony School Psychologist; Exhibit B-79] Dr. Werblood concurred that as a professional, she wants the flexibility to select the testing instrument when she conducts an assessment. [Testimony Dr. Werblood] While the Parents assert that the WISC IV should have been the instrument selected for the triennial reevaluation, the School Psychologists' professional judgment as to the testing instrument selected was appropriate.
16. The school psychologist explained that the standard score is the most useful score in understanding the results, and is much more helpful than considering the age equivalent or percentile scores. The Student's standard scores in the WJ III Cog were: verbal ability, 88; thinking ability, 80; cog efficiency, 61; L-T retrieval, 76; process speed, 77; working memory, 71; cognitive fluency, 67; GIA (global intellectual ability), 77. The scores on the WJ III Cog have a mean of 100 with a standard deviation of 15 and an average range of 85 to 115. The School Psychologist concluded that the Student's performance on cognitive tasks reflects an overall low to low average cognitive ability. Her thinking ability and verbal ability is low average and her cognitive efficiency,

including her processing speed, short term memory and working memory is low to extremely low. [Testimony School Psychologist, Exhibit B-79]

17. The School Psychologist concluded that the WJ III Cog's GIA score might be an underestimate of the Student's overall cognitive abilities and determined that the subtests in terms of related groupings or clusters provide more precise information about the Student and would better explain her strengths and weaknesses. [Testimony School Psychologist; Exhibit B-79]
18. Based on his assessment the School Psychologist was able to characterize the Student's strengths and weaknesses, noting that the Student has an overall cognitive ability in the low average range, which may be impacted by difficulty with short term memory and cognitive fluency. The School Psychologist noted that the cognitive fluency area is potentially the most difficult for the Student to overcome and shared recommendations to compensate for those weaknesses. [Testimony School Psychologist, Exhibit B-79]
19. The school psychologist was appropriately trained and credentialed to administer the assessments to the Student. He was also familiar with Prader-Willi Syndrome, and the manner in which this syndrome may impact a student's functioning. He had reviewed the Student's educational records and prior evaluations prior to completing his assessments of the Student. [Testimony School Psychologist]
20. The School Psychologist found that his assessments were consistent with his formal and informal observations of the Student, as well as consistent with feedback obtained from the rest of her educational team. Therefore, there was no need to conduct any further assessments. The School Psychologist's evaluation provided important information which was used to develop an appropriate IEP for the Student and utilize and maximize the use of her strengths to learn and access the curriculum. The School Psychologist felt that different strategies and accommodations would assist in removing barriers to learning. He recommended ways to address the area of rate of learning new information, as well as provided the team with strategies to allow generalization to occur most efficiently. [Testimony School Psychologist, Exhibit B-79]
21. The School Psychologist provided a copy of his evaluation report to the Parents prior to the PPT meeting scheduled to review the triennial reevaluation, which was sent as an email to both Parents with an invitation to discuss the results. [Testimony School Psychologist; Exhibits B-79, B-82]
22. The Parents emailed the School Psychologist regarding their comments about his report. Their first comment was "We are responding to the Diagnostic study of our daughter [] you emailed to us. Diagnostic? She has already been diagnosed. Please refer to her records." [Exhibit B-82] The School Psychologist chose the title "Report of Diagnostic Study" for his evaluation report, not questioning the medical diagnosis, but because his evaluation was to assist in the determination of whether the Student's educational disability continues to be present in accordance with IDEA. [Testimony School Psychologist]

23. The Parents also expressed concern on the use of the BASC-2 as a tool in assessing the Student. The School Psychologist agreed that it is not sufficient on its own, but said that the BASC-2 or a similar tool would be an appropriate tool to evaluate the Student's ability to access curriculum in school and how she behaves in the environment. It is an appropriate instrument to use with all students involved in public education, in that it reveals and rules out problems including internalized problems such as anxiety, depression and somatization. In the Student's BASC-2 evaluation, the most important piece was not only that the Student was withdrawing from social situations, it was that she also self-reported that she felt isolated and not in control of outcomes. [Testimony School Psychologist; Exhibits B-79, B-82]
24. In the Parents' email, they shared that they thought a neuropsychological NEPSY evaluation should be completed. The School Psychologist responded to the Parents that he did conduct testing on executive functioning, as well as conducted assessment of behavior which also measured functioning. [Testimony School Psychologist, Exhibit P-12] Dr. Werblood, who conducted a limited record review of the Student's recent evaluations, concurred that the testing completed by the School Psychologist tapped into the skills that would be tested in the NEPSY. [Testimony Dr. Werblood]
25. In addition the School Psychologist explained that, as a multidisciplinary team, the language arts consultant, the special education case manager and the school psychologist discussed what assessments were most appropriate to use, and the assessments selected were excellent tools to obtain accurate and helpful information about the Student and her functioning. Given the level of learning difficulties that the Student was exhibiting, the team determined that a more in-depth specific assessment should be completed regarding math, so the Key Math was selected to obtain more in-depth achievement scores. The School Psychologist invited the Parents to have a meeting or a phone conversation to review and discuss the evaluation. While the Parents were dissatisfied with the School Psychologist's evaluation and response to their comments, they did not request a meeting to discuss the evaluation further. [Testimony School Psychologist, Father; Exhibit P-12]
26. The results of the triennial testing were reviewed at a PPT meeting on February 11, 2011. After review of the triennial reevaluation, the members of the PPT agreed that the Student continued to be eligible for special education and related services and the new goals and objectives were discussed and accepted. At this PPT meeting, the Parents did not state they disagreed with the Board's triennial reevaluation and did not request an independent evaluation. [Testimony LA Consultant, School Psychologist, Mother, Father; Exhibit B-83] The Mother and the Father had the assistance of the Grandmother, who is a Connecticut school psychologist, at this PPT meeting. [Testimony Grandmother]
27. The PPT convened on February 3, 2012. At this PPT meeting the Parents disagreed with the Board's evaluation conducted during the 2010-11 school year, and indicated that they exercised their rights to an independent evaluation. [Exhibit B-97] The Parents also submitted a lengthy written memorandum at the PPT meeting as to what they felt was the Student's lack of progress over the years. [Testimony Mother; Exhibit P-8] At this PPT meeting the Parents' advocate requested an out of district placement, but the Mother

testified that the advocate misspoke on their behalf when she requested the out of district placement. [Testimony Mother]

28. The Board brought this action to defend the appropriateness of its evaluation of the Student. [Exhibit H.O.-1]

DISCUSSION/CONCLUSIONS OF LAW:

The Board brought this action in accordance with the Individuals with Disabilities Education Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. It is undisputed that the Student has been eligible for special education and related services under the disability category of Other Health Impaired pursuant to state and federal laws. See Conn. Gen. Stat. §§ 10-76 *et. seq.*; the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, *et seq.*

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense. 34 CFR §300.502 The Board appropriately submitted its hearing request in accordance with these regulations.

To conduct an appropriate evaluation, the Board must ensure that the evaluation is comprehensive. In accordance with 34 CFR §305, as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must—

"(1) Review existing evaluation data on the child, including—(i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine . . . (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; . . . (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are

needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum . . . The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section." 34 CFR §300.505

In this case, the Board conducted an appropriate review in accordance with the federal regulations.

The Parents objected to the triennial reevaluation because the Board's evaluators did not select the testing instruments that the Parents preferred. Among the complaints was that the WISC IV, which was an assessment administered in prior evaluations, was not re-administered during the most recent triennial reevaluation. The school psychologist provided a credible, sound and appropriate reason for selection of the WJ III Cog, rather than the WISC IV. The Parents also expressed a preference for the Wechsler Individual Achievement Test (WIAT) rather than the achievement testing completed by the Board. The Board's selection of achievement testing was appropriate and directed at obtaining specific and important information about the Student's strengths, weaknesses and current academic functioning.

The selection of the various assessment tools was appropriate in this case and was in accordance with appropriate professional standards and judgment. The assessments conducted were appropriate in that the assessors were qualified to conduct the assessments, used multiple and validated assessment tools, assessed generally in all areas of suspected disability, utilized nondiscriminatory assessments, directed the assessments at determining the Student's strengths and weaknesses and did not rely on one test or tool to make their determinations. The selection of particular testing or evaluation instruments is left to the discretion of the LEA. *Letter to Baumtrog*, 39 IDELR 159 (OSEP 2002); *Letter to Anonymous*, 20 IDELR 542 (OSEP 1993)

At the hearing, the Parents claimed that they were presented with the consent form for the triennial reevaluation, but were given no explanation of the tests to be conducted. The consent form outlined the evaluations that were to be conducted and clearly included a name and phone number of the person to contact for further information, but the Parents never contacted the Board for a further explanation or clarification of the testing. The Parents also did not question the Board about the evaluations during team meetings and other communications with the Board staff. The Board appropriately communicated to the Parents information about the evaluations that were conducted for the triennial reevaluation, and the Parents had full and ample opportunity to provide input and seek clarification and information about the triennial reevaluation.

The Parents were full participants in the Student's program, and the PPT has had the benefit of parental input about the Student throughout the course of the time the Student has been educated at the Board schools.

During the course of the hearing, the Parents advanced a position not previously presented, that the Board failed to have a medical evaluation of the Student as part of the triennial reevaluation. The diagnosis of Prader-Willi Syndrome has not been changed for the Student and the Board has adequate and appropriate information on how the syndrome impacts the Student's education. There was no reason for a medical evaluation proffered by the Parents, nor any evidence which supported that such a request was made by the Parents prior to hearing. The Board's triennial reevaluation was appropriate, even in the absence of an additional medical evaluation.

The Parents also claim that the triennial reevaluation was lacking in that a Vineland assessment of adaptive functioning was not conducted. The Board did obtain information about adaptive skills from the BASC-2, which was part of the triennial reevaluation. According to the

testimony of Dr. Werblood, the Vineland is an instrument that she selects to check on adaptive functioning if students have borderline cognitive functioning. The Student's cognitive functioning exceeds the borderline level. Adaptive skills were reviewed as part of the triennial reevaluation and the Board's selection of the instrument to test adaptive skills was appropriate.

The Board's triennial reevaluation of the Student was comprehensive and appropriate. The Board conducted the assessment in a thorough and comprehensive manner, utilizing a variety of assessment tools to gather relevant functional, developmental and academic information about the child and not relying on one sole measure or assessment; using assessments that were valid, reliable and administered appropriately; selecting the assessments tailored to the Student's needs; testing in all areas related to the Student's disability and ensuring that the evaluation was sufficiently comprehensive to identify all of the Student's special education and related service needs and provided relevant information that directly assisted the PPT in determining the educational needs of the Student.¹

¹ (b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—(1) 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, that may assist in determining—(i) Whether the child is a child with a disability under § 300.8; and(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) 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 (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (c) *Other evaluation procedures.* Each public agency must ensure that—(1) 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.(2) 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.(3) 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).(4) The child

The Board's triennial evaluation of the Student was appropriate, and conducted in a thorough and comprehensive manner. Therefore, the Student is not entitled to an IEE at Board's expense.

FINAL DECISION AND ORDER:

1. The Board's triennial evaluation of the Student is appropriate.
2. The Parents are not entitled to an IEE at Board expense.

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;(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.(6) In evaluating each child with a disability under §§ 300.304 through 300.306, 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.(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. 34 CRF §300.304