

**COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS**

In Re: Nashoba Regional School District v.
Student

BSEA # 09-6858

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

On May 8, 2009, Nashoba Regional School District (NRSD) filed a Request for Hearing in the above-referenced matter. On May 27, 2009, Parent filed a Request for Hearing in a related matter (BSEA #09-7381). On the same day, Parent moved and was granted consolidation of the two cases. On July 3, 2009, in response to parties' joint request, the two cases were bifurcated so that the issues in this case might be disposed of prior to the Parent's requested hearing (which is scheduled in September 2009). The hearing on NRSD's Request for Hearing was held on July 31, 2009 at the BSEA, 75 Pleasant St., Malden, Massachusetts, before Hearing Officer Rosa I. Figueroa. Those present for the proceedings were:

Tracy Conte	Director of Special Education, NRSD
Michael Davies	Assistant Director of Special Education and School Psychologist, NRSD
Anne Neylon	Team Chairperson, NRSD
Inna Loning	Summer Associate for NRSD
Regina Williams Tate	Attorney for NRSD
Nick Morana	Attorney for Parent
Tami L. Fay	Legal Intern, Bureau of Special Education Appeals (BSEA)

The official record of the hearing consists of documents submitted by NRSD and marked as exhibits SE-1 through SE-14 and recorded oral testimony and oral closing argument. The record closed on July 31, 2009.

HEARING ISSUES

1. Was NRSD's evaluation of Student on March 10, 2009 comprehensive and appropriate?
2. If not, is Parent entitled to a publicly funded independent evaluation?

POSITION OF THE PARTIES

NRSD's Position:

Student was fully evaluated in 2006 and 2008 by other school districts. Additionally, NRSD conducted another thorough evaluation in March of 2009. According to NRSD, no stone was left unturned in trying to ascertain whether Student had a learning disability. This testing was comprehensive and appropriate; therefore, Parent is not entitled to a publicly-funded independent evaluation.

Parent's Position:

Parent disagrees with the March 31, 2009 finding of ineligibility for special education services. Parent desires an independent educational evaluation, but it is unclear as to what additional or different testing she wishes to have done. Since no observation of Student in the school environment, health or home assessment was conducted, Parent states that the evaluation was not comprehensive. Furthermore, Student was in a detention center at the time of NRSD's evaluation. Parent is uncertain as to whether all areas were truly thoroughly evaluated. Parent therefore claims her right under federal and state special education laws and regulations to a publicly-funded independent evaluation prior to proceeding to a hearing regarding eligibility.

FINDINGS OF FACT

1. Student is 12 year old boy who, until December 2008, was living with his mother in Lancaster, MA (within NRSD). Student most recently attended Luther Burbank Middle School in the general education classroom. Student has not been found eligible to receive special education services.
2. In 2006, Student was evaluated by Clinton Public Schools and was administered the Weschler Intelligence Scale for Children (WISC-IV), the Woodcock Johnson III Test of Achievement (WJ III), a speech and language evaluation, and an occupational therapy evaluation. The results of this testing are not in evidence. Clinton Public Schools found that Student was not eligible for special education services on February 8, 2006 (SE-1).
3. Two years later, in March 2008, while residing in Marlborough, Student participated in an educational evaluation and a psychological evaluation. Student's cognitive levels, as measured by the WJ III, fell entirely in the average range (SE-4). The evaluator further noted that

“when compared with others at his grade level, [Student's] overall level of achievement is average. His academic skills, his ability to apply those skills and his fluency with academic tasks are all within

the average range. [Student's] performance is high average in written expression and average in broad reading, basic reading, math calculation [sic], math reasoning and written language" (SE-4).

Student's scores on the WISC-IV placed him in the average and low-average range of intelligence (SE-5):

<u>Composite Subtest</u>	<u>Score</u>	<u>Range</u>
Verbal Comprehension	100	Average
Perceptual Reasoning	84	Low Average
Working Memory	91	Average
Processing Speed	85	Low Average
Full Scale IQ	88	Low Average

Marlborough Public Schools found that Student was not eligible for special education services on May 29, 2008. Marlborough found that Student had a health disability that was resulting in a lack of progress in school, but that specialized instruction and/or services were not needed (SE-6).

4. Student began the 2008-2009 school year, his sixth grade, as a regular education student at the Luther Burbank Middle School in NRSD (SE-8; Testimony of Davies). On October 24, 2008, Student brought an air soft gun to an after-school event. In response, NSRD requested that Jay L. Ryan, Ed.D., Clinical Child Psychologist¹, conduct a risk assessment evaluation. The risk assessment took place on November 7, 2008. Based on information provided by Parent, Dr. Ryan assumed that Student carried a diagnosis of ADHD² (SE-7). Dr. Ryan performed a Clinical Family Interview and administered the Children's Depression Inventory (C.D.I.), Rey Osterrieth Complex Figure-Copy and Memory (1 ½ hours later), Adolescent Anger Rating Scale (A.A.R.S.), Children's Inventory of Anger (Ch.I.A.), Continuous Performance Test (C.P.T.) (Attention, Impulsivity & Self-Regulation Scales), Children's Manifest Anxiety Scales (C.M.A.S.), Thematic Apperception Test (T.A.T.) Story Cards, Millon pre-Adolescent Clinical Scale (M.P.A.C.I.), and the Sentence Completion Test. He also had the following questionnaires completed: Child Behavior Checklist Ages 4-16 (Parent Form); Conflict Behavior Questionnaire for Parents;

¹ Dr. Ryan is a consultant to NRSD and had previously observed Student while in the third grade.

² It is unclear when or by whom Student was diagnosed with ADHD. However, in a report dated March 27, 2009, Dr. Davies offers the following explanation: "[Parent] provided the Nashoba Regional School District with a letter (10/27/08) written by Dr. Richard Marseglia stating that 'sometime [sic] in 2008' [Student] had been diagnosed with ADHD by a Dr. Li. Both [Student and Parent] reported that a trial of medication for ADHD (Adderall) had not been helpful and that [Student] has not taken medication since that trial" (SE-10). Parent has made statements, verbally and in writing, referring to this 2008 diagnosis, but there is no document in the record to support these statements.

Teacher Form of C.B.C.L. (Behavior Checklist); Youth Self Report (a Self-Report Checklist completed by Student). Dr. Ryan found Student to be “personable, charming and manipulative” and opined that Student presented issues with self-esteem, impulsivity and reactive anger. Dr. Ryan was most concerned about the impulsive behaviors combined with conduct issues. He stated in his evaluation that

When you have a tendency to not “think before you act” and have problems with organizational skills and planning ahead, you are likely headed for trouble. If you tell others that you have no remorse for these actions, you are headed for big trouble. It seems that [Student’s] trade of his skate board for an air soft gun is an action that is not well planned. Taking the air soft gun to a school social/dance is an impulsive act headed for “big” trouble... He did not reflect on the right or wrong dimensions of this case until he went to school on the following Monday and was told that it would be reported to the Principal... [Student] still likes school. He reads well and can achieve in a school district which has a great deal of opportunities for academic learning, an excellent trade school and wonderful extracurricular activities. (SE-7).

However, Dr. Ryan found that Student was not a risk to himself or others and following a ten day suspension Student returned to school (SE-7; SE-8). He recommended intervention for managing Student’s ADD/ADHD diagnosis, therapy and strengthening the support to Student’s family as they presented difficulties with providing structure, managing Student and with giving him too much freedom (SE-7).

5. Due to a separate incident on December 8, 2008, Student was arraigned for carrying a dangerous weapon. Pursuant to MGL c. 119 § 68A, the judge ordered a juvenile court clinic psychosocial/violence risk evaluation of Student, performed by Julie Ann Lamacchia, LICSW, CJCC I, on December 26, 2008 and January 15, 2009 (SE-8). The evaluator emphasized Student’s

“chronic history of familial chaos” and, regarding Student’s possible learning disability diagnosis, concluded that “given the environmental chaos, difficulties with inattention, distractibility and impulsivity are likely. I am not saying that [he] definitively does not have ADHD; however, a more accurate diagnostic profile will be feasible when he is stabilized by a consistent structure and routine” (SE-8).

6. On January 14, 2009, Parent requested an evaluation from NRSD (SE-9). NRSD forwarded to Parent a consent form on January 21, 2009, recommending an academic achievement assessment, an educational assessment, and a psychological assessment. Parent consented to these recommended evaluations on February 11, 2009³ (SE-9). Parent did not request a home assessment as part of the evaluation, something that would have given the evaluator a sense of the day to day home situation and care provided to Student. According to Dr. Michael Davies, Assistant Director of Special Education at NRSD, NRSD already had quite a bit of information regarding the home situation from the previous evaluations, including the Juvenile Court Clinic Evaluation Report of January 26, 2009, describing a chaotic home life (SE-7; SE-8; Testimony of Davies).
7. On March 10, 2009, Dr. Michael Davies conducted a psychoeducational assessment of Student. He holds a Ph.D. in clinical psychology and teaches a neuropsychological testing course at Northeastern University's School of Psychology. Dr. Davies holds Massachusetts certification as a school psychologist and has conducted between eight and forty evaluations per year since obtaining his degree in the early 1980s (Testimony of Davies).
8. Dr. Davies' evaluation of Student took place in a small room overlooking the basketball court at the DYS facility in Peabody, MA where Student was at that time detained. Since Student had participated in multiple evaluations during the proceeding two and a half years, Dr. Davies used a cross-battery of subtests in order to overcome any "practice effect" that would have rendered the results of the evaluation unreliable. Dr. Davies testified that using a cross-battery of tests was a broader way to look at cognition and its impact on academic performance (Testimony of Davies).
9. Dr. Davies testified that Student reported doing alright at the DYS facility, he enjoyed the food, access to a flat screen television and was accessing an education. In his opinion, Student responded well to the structure of a place where routines were predictable and he was cared for. Student was friendly, polite and cooperative during the four and a half (4½) hour evaluation even when he was not able to have lunch during the lunch break. Student used humor during parts of the evaluations when he was certain of an answer ("That's my final answer"), and demonstrated adequate planning skills. He worked at a steady, even pace. Student appeared to be hyper-vigilant and in-tune with his surroundings, noting

³ On January 23, 2009 Parent initially returned the consent form, having marked that she accepted the evaluation only in part. She attached a statement, but it did not indicate which evaluations she objected to or any additional evaluations that she sought. NRSD therefore waited until she resubmitted the form on February 11, 2009 having marked that she accepted the proposed evaluation in full.

(from the noises) when someone was being restrained outside the testing room, and listening to other youths playing basketball in the court. In spite of the noises and other distractions, Student was able to attend to task and complete the evaluation. Dr. Davies opined that Student’s attention was remarkably good during the evaluation; given the degree to which he was able to concentrate and respond, Student’s behavior was inconsistent with a diagnosis of Attention Deficit Hyperactivity Disorder. Student had difficulty getting started on tasks, completing homework, initiating tasks in a timely manner and ensuring that he had the materials needed to complete a given assignment (Testimony of Dr. Davies).

10. Regarding previous evaluations, Dr. Davies opined that Student’s Perceptual Reasoning, Working Memory, and Full-Scale IQ scores from the MPS’ testing in May 2008 were not interpretable given the variability of the subtest/composite scores. Dr. Davies therefore administered selected subtests of the WJ-III, selected subtests of the Wechsler Individual Achievement Test (WIAT-II), selected subtests of the Wide Range Assessment of Memory & Learning (WRAML-2), selected subtest of the Test of Written Language (TOWL-3), the Gray Oral Reading Test (GRAY-4), the Behavior Rating Inventory of Executive Function (BRIEF), and the Behavior Assessment System for Children (BASC-2) (SE-10). Student’s cluster scores and ranges from the subtest groups follow:

Subtest	Group	Cluster Score	Range
Fluid Reasoning (Intelligence)		111	Average
Crystallized Intelligence		102	Average
Visual Processing		102	Average
Long-term Retrieval		122	Normative Strength
Short-term Memory		110	Average
Processing Speed ⁴		91	Average

Dr. Davies also found that Student’s attention-executive skills were in the average range as was Student’s reading and writing ability (SE-10). According to Dr. Davies, Student’s cluster scores in quantitative reasoning (which involves mathematical achievement and mathematical knowledge) also fell in the average range. However, on the WIAT –II Numerical Operations (A3), which involves calculation of mathematical operations Student obtained a score of 79 which Dr. Davies found to be low (Testimony of Davies). Dr. Davies explained that this score shows that Student has gaps in learning which he attributed to the numerous changes in schools over the past few years. He stated that Student has the ability to

⁴ Dr. Davies testified that speed of reason was a relative weakness compared to the rest of Student’s scores but it still fell within the average range (Testimony of Davies).

bridge the gaps, and that since he is willing to work hard, he can bridge them. Dr. Davies testified that Student has a math tutor at DYS⁵.

11. Given the environment in which Student was at the time of this evaluation⁶, Dr. Davies was not surprised to see that Student's scores were elevated. It appeared to Dr. Davis that Student was aware that he had done well in the evaluation and appeared to feel good about it (Testimony of Davies). Dr. Davies concluded that Student did not meet the criteria for depression but did meet all four DSM IV criteria for a conduct disorder⁷ (See DSM IV; Testimony of Dr. Davies). Similarly, in his opinion, Student did not present with an attentional disability. Dr. Davies explained that if Student were upset about something that happened outside school, he would likely be preoccupied with it, and it would be difficult for him to attend and do well in school (Testimony of Davies).
12. Dr. Davies could not identify any different testing instrument that could be used to further shed light on Student's cognitive, aptitude or clinical profile. In his opinion no further testing was necessary or helpful. (Testimony of Davies).
13. Dr. Davies presented his findings at the NSRD Team meeting on March 31, 2009. Anne Neylon was the Team chairperson. She is certified as social worker Pre-Kindergarten to grade three (Testimony of Neylon). Using the Massachusetts eligibility chart, the Team determined that Student was not eligible for special education services because he did not meet the state criteria for a learning disability diagnosis. The Team considered the possibility of an emotional impairment, but concluded that even with such a diagnosis, he was not eligible because Student was making effective educational progress and was therefore not in need of specially designed instruction (Testimony of Neylon; SE-11). Notice of the finding of ineligibility was sent to Parent on April 6, 2009.
14. Parent requested an independent educational evaluation in a letter to Dr. Davies dated April 29, 2009. Parent cited Student's scores on the BASC-2 and the BRIEF as indicating that the finding of ineligibility was improper (SE-12). Parent also requested a BSEA hearing in this letter, but Dr.

⁵ At first Student did not do well in the group situation at DYS so he worked with a tutor on a one-to-one basis, and then was able to reintegrate into the regular class where he was reportedly doing well academically (Testimony of Davies).

⁶ Dr. Davies testified that he did not rely on the results of the Marlborough evaluation as much as the results of his own evaluation because Student was living in a chaotic home environment while in Marlborough which he believed impacted the results of that evaluation (Testimony of Davies).

⁷ That is: aggression, destruction of property, deceitfulness and serious violation of rules (DSM IV).

Davies wrote on May 6, 2009 and directed Parent to the BSEA website in order to file a request for hearing⁸ (SE-12; SE-13).

15. NRSD filed a request for hearing, on the matter of the appropriateness of the independent evaluation, on May 8, 2009.

16. On May 27, 2009, Parent filed a request for hearing with the BSEA to challenge NRSD's finding of ineligibility.⁹

CONCLUSIONS OF LAW

This matter exclusively addresses NRSD's request for a determination by the BSEA that its evaluation of Student was comprehensive and appropriate, and that it is therefore, not responsible to fund the independent evaluation sought by Parent.

Upon consideration of the testimony and documents admitted in evidence, and relying on the Findings of Fact section of this decision, I conclude that the evidence presented by NRSD supports its claim that its evaluation was comprehensive and appropriate. In this regard, NRSD met its burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005).¹⁰ My reasoning follows:

The IDEA¹¹ regulations confer upon parents of disabled students the right to proceed with independent evaluations at public expense. 34 CFR 300.502. The regulations define independent evaluation as an

Evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. 34 CFR 300.502(a)(3)(i).

For purposes of this section, the term public agency is equivalent to local educational agency, that is, the particular school district responsible for the student in question. The right to an independent evaluation arises

If the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. 34 CFR 300.502(b)(1).

⁸ For purposes of the IDEA, a request for hearing was triggered when NRSD (the opposing party) received Parent's notice that she sought a hearing. At that point, a copy sent to the BSEA satisfies the regulations of IDEA. See also Rule I.B of the Hearing Rules for Special Education Appeals.

⁹ That issue will be decided at a hearing scheduled to take place in September of 2009.

¹⁰ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

¹¹ See 20 USC 1415(d)(2)(A).

The federal regulations further provide that if the requisite conditions are met, the evaluation must be provided at public expense, that is,

that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with 300.103. 34 CFR 300.502(a)(3)(ii).

This means that the school district must pay the full cost of the evaluation sought by parent or ensure that the evaluation will be provided at no cost to the parent. States are left to regulate further consistent with federal law.

Additionally, federal regulations discourage unnecessary delays by school districts when a parent requests an independent evaluation by mandating that the school district either pay for the evaluation or request a hearing when it believes that its evaluation is appropriate. 34 CFR 300.502(b)(2).¹²

Consistent with federal law and regulations, the Massachusetts special education regulations provide parents a right to independent evaluations as stated in 603 CMR 28.04(5)(a) which provides

- (5) Independent education evaluations. Upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation completed by the school district, then the parent may request an independent education evaluation.

In sum, both the federal and Massachusetts regulations provide that the right to an independent evaluation arises after the school district has first conducted an evaluation that parent disputes. Massachusetts Regulations further provide that

If the parent is requesting an independent education evaluation in an area not assessed by the school district, ... the school district shall respond in accordance with the requirements of federal law. The district shall either agree to pay for the independent education evaluation or within five school days, proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. (Emphasis added) If the Bureau of Special Education Appeals finds that the school district's evaluation was comprehensive and appropriate, then the school district shall not be obligated to pay for the independent education evaluation requested by the parent. 603 CMR 28.04(5)(d).

¹² The school district is also required to request a hearing if it is challenging the independent evaluation obtained by the parent on the basis of failure to meet agency criteria. 304 CFR.502(b)(2)(ii).

In the instant case, upon receiving valid consent from Parent on February 11, 2009, NRSD conducted its evaluations on March 10, 2009. NRSD then convened a Team meeting on March 31, 2009 to discuss the results of the evaluation and determine Student's eligibility according to Massachusetts Special Education law criteria. Parent was in attendance at this meeting (SE-11; Testimony of Neylon). After discussing the results of the evaluations, the Team did not find Student eligible to receive special education services (SE-11). The finding of no eligibility was forwarded to Parent on April 6, 2009 (SE-11). Parent then requested an independent evaluation by letter dated April 29, 2009, received on May 1, 2009.

On May 6, 2009, NRSD denied Parent's request for an independent evaluation, asserting that its March 10, 2009 evaluation was comprehensive and appropriate. NRSD filed a request for hearing with the BSEA on May 8, 2009. 603 CMR 28.04(5)(d), cited above, unequivocally states that the school district "shall" either pay for the requested independent evaluations or proceed to the BSEA within five (5) school days of the day on which it received Parent's request. NRSD filed its request on the fifth school day of the date of receipt of Parent's request.¹³ Since NRSD filed in a timely fashion it is responsible to show that its evaluation was comprehensive and appropriate, and in this regard it carries the burden of persuasion.

At the hearing, Parent was unclear about what specific evaluations she was seeking. She challenged the omission of a health assessment, home assessment, and student observation in NRSD's March 2009 evaluation. The evidence shows that none of these assessments was identified in the consent form forwarded to Parent. According to Dr. Davies, Parent was not interested in a home assessment and Student was already detained at the DYS facility at the time of this evaluation, rendering an observation of Student useless and moot for purposes of ascertaining whether Student required a different educational program and placement. Regarding the health assessment, Parent has raised the existence of a diagnosis of ADHD, which several evaluators have accepted as a previous diagnosis, although Dr. Davies questioned whether this diagnosis was correct and if it was, whether it impacted Student's ability to access education in any way. Parent first mentioned her desire for the aforementioned evaluations at hearing. In light of the evidence presented at hearing, I am not persuaded that these evaluations are necessary and it is doubtful that any of

¹³ Although the Massachusetts regulation does not specifically state that calculation of time begins on the date on which the school district receives the request for independent evaluation it is only reasonable to conclude that this is what is meant. The manner in which time is computed for purposes of administrative hearings and the BSEA is found in 801 CMR 1.01(4)(d) stating that

Unless otherwise specifically provided by 801 CMR 1.00 or by other applicable law, computation of any time period referred to in 801 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Agency is closed, when the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Agency is closed shall be excluded.

them will yield any relevant information to the issue of whether Student is eligible to receive special education. NRSD is persuasive that these evaluations would have been irrelevant and therefore, Parent is not entitled to them.

I now turn to the issue of the appropriateness of NRSD's psychoeducational evaluation. At hearing, Dr. Davies presented as a very credible and extremely well-qualified witness (see Fact 7). He was candid in his explanation of his evaluation, providing a full and thorough explanation of cross-battery theory, and supporting his reasons for selecting certain testing instruments and subtests. He was persuasive that given the numerous evaluations to which Student had been subjected over the previous two years, using a cross-battery of tests offered the most accurate profile of Student's functioning and abilities (see Fact 7). He explained that since Marlborough Public Schools had utilized the WISC-IV and WJ III in its evaluation less than one year prior to NRSD's evaluation, it would have been inappropriate to use them in their conventional form. Dr. Davis questioned some of the results of that testing. Therefore, he substituted in different subtests, carefully-selected so as to properly isolate and assess Student's perceived areas of weakness, while assessing the variability demonstrated on previous testing. Dr. Davies could have easily relied more heavily on the findings from Student's prior educational evaluations, but instead chose to disregard several past scores as "not interpretable" and rigorously pursue more up-to-date information (SE-10; Testimony of Davies). The different instruments used by Dr. Davies proved to be appropriate and necessary in light of the circumstances, to obtain the most accurate and complete representation of Student's cognitive and intellectual functioning (Testimony of Davies). Furthermore, the fact that Dr. Davies possesses a doctorate degree in psychology, that he has extensive training and experience in conducting evaluations, and that he teaches a class in psychological testing at Northeastern University, also weighed heavily toward his credibility and reliability as a witness.

Parent challenged the reliability of Dr. Davies' findings by arguing that the DYS facility testing area was optimal resulting in an inaccurate representation of Student's abilities. This argument however is not supported by the evidence. Dr. Davies testified that the room in which he evaluated Student was physically equivalent to the rooms in which he conducts testing in public schools. Furthermore, Dr. Davies opined that, given the chaotic environment Student reportedly functioned in when living at home, the DYS facility provided Student a more supportive and predictable environment, allowing Student to show his true potential and abilities (Testimony of Davies). Student had settled well into the DYS routines. He reported to Dr. Davies that he enjoyed the food, recreational areas, and the predictability of the overall structure. Although Student seemed hyper-aware of his surroundings, he attended to task and did not allow the outside noises to interfere with his performance. According to Dr. Davies, Student worked diligently throughout the testing, in spite of outside distractions and missing lunch. Dr. Davies therefore concluded that the testing provided an accurate reflection of Student's current functioning and abilities. Taking into consideration Dr. Davies' credible testimony regarding the totality of the

circumstances surrounding the evaluation, the fact that it may have taken place under “optimal” conditions does not in any way invalidate the results. In fact, if anything, it reinforces their validity.

Taking into consideration the totality of the evidence and Dr. Davies’ credibility as a witness, I find that the evaluation performed by Dr. Davis on March 10, 2009 was appropriate and comprehensive. Furthermore, given the frequency and extent of Student’s recent psychoeducational evaluations, there is a question as to what other testing instruments could be used to reliably evaluate Student further. Also, it is quite doubtful that any further testing would yield a different result (Testimony of Davies). The record evinces the great lengths to which Dr. Davies went on March 10, 2009 to select a cross-battery of subtests with which to evaluate Student. Presumably, selection in the near future of additional instruments would be even more difficult, and Parent has not presented any potential testing instruments for consideration to overcome this hurdle. Lastly, in closing, Parent’s attorney himself acknowledged that Dr. Davies’ evaluation was comprehensive and appropriate.

The record is persuasive that no further psychoeducational testing would advance the Hearing Officer’s knowledge or understanding of Student’s abilities and cognitive functioning. The only area of disagreement among NRSD’s Team members related to the possible existence of an emotional disability as referenced by Ms. Neylon (see Fact 8; Testimony of Neylon). To this extent, it is possible that personality and projective testing may be helpful to properly understand Student’s psycho-emotional functioning. The only information regarding Student’s personality and projective testing is found in Dr. Ryan’s evaluation (See Fact # 4; SE-7). However, Parent has not specifically requested a personality and projective assessment, she failed to present any evidence to support its usefulness and were she to request one at this juncture, NRSD must be provided with the opportunity to evaluate Student in this area before Parent’s right to an independent evaluation would arise. Therefore, I do not enter a determination regarding the need for any further testing/evaluation of Student.¹⁴

Since this matter has been consolidated with Parent’s request for hearing (BSEA #09-7381), which is scheduled for hearing in September of 2009, in an effort to avoid unnecessary repetitious testimony, the evidence offered at this hearing is hereby incorporated by reference into the record of BSEA #09-7381. Neither Dr. Davies nor Ms. Neylon need to be re-called regarding the testimony already in the record. However, NRSD’s and Parent’s right to recall Dr. Davies and Ms. Neylon for additional testimony regarding the eligibility issue (or other matters not addressed as part of this hearing) is preserved.

¹⁴ Note Dr. Davis’ testimony that Student’s profile may be consistent with a conduct disorder diagnosis.

ORDER

1. NRSD's evaluation of March 10, 2009 is found to be comprehensive and appropriate.
2. Parent is not entitled to public funding of any of the evaluations sought by her at hearing, namely: a health assessment, home assessment, student observation, or any further psychoeducational evaluation.
3. Parent and NRSD shall discuss the need for further personality and projective assessment.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: August 21, 2009

I would like to recognize the assistance and contributions provided by BSEA legal intern Tami L. Fay in drafting this decision.

August 21, 2009

**COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS**

NASHOBA REGIONAL SCHOOL DISTRICT

BSEA # 09-6858

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**NICK MORANA, ESQ., ATTORNEY FOR PARENT
REGINA WILLIAMS TATE, ESQ., ATTORNEY FOR
NASHOBA REGIONAL SCHOOL DISTRICT**