

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education

Appearing on behalf of the Parents: Father, *Pro Se*

Appearing on behalf of the Board of Education: Attorney Marsha Moses
Berchem, Moses & Devlin
75 Broad Street
Milford, CT 06460

Appearing before: Stacy M. Owens, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUE

Whether the Parent is entitled to an independent evaluation at Board expense.

PROCEDURAL HISTORY

On or about April 23, 2008, 2008, the State of Connecticut Department of Education received a request for hearing from the Parent in this matter

On April 30, 2008, the undersigned was appointed as hearing officer to preside over the hearing, rule on all motions, determine findings of fact and conclusions of law, and issue an order.

A prehearing conference convened on May 9, 2008. During the prehearing conference, Attorney Marsha Belman Moses appeared on behalf of the Board; the Parent appeared *pro se*. The issues were discussed and confirmed, and the hearing dates were scheduled, accommodating the parties' request for mediation.

By memorandum dated June 16, 2008, the undersigned received notice from the State of Connecticut Department of Education indicating the parties did not reach an agreement at mediation.

The hearing convened on July 10, 11, and 17, 2008.

SUMMARY

In September 2006, the Parent requested an independent evaluation at Board expense to determine whether the Student's services in the regular education classroom could be increased. The Parent selected Dr. Kathleen Whitbread to conduct the evaluation. Dr. Whitman's evaluation focused exclusively on assessing the Student for increased mainstream instruction. Following collaborative meetings, at which the Parent agreed with proposed recommendations, Dr. Whitbread's evaluation report was released on March 13, 2007.

On March 20, 2007, the Student's triennial review was conducted and the Student's Individualized Education Program ("IEP") was developed based on Dr. Whitbread's report, a psycho-educational evaluation, a speech and language evaluation, and an occupational therapy evaluation. The Parent did not express any dissatisfaction with the proposed IEP.

Approximately six weeks after the release of Dr. Whitbread's evaluation report, the Parent complained about Dr. Whitbread's process of evaluating the Student. By December 20, 2007, the Parent requested another independent evaluation, ultimately leading to his request for hearing.

FINDINGS OF FACT

1. The Student, born 9/15/99, is identified as a child with a primary disability of Autism with limited expressive language. Bd Exh. 1.
2. The Student has been enrolled in the Board's district and identified as eligible for special education since June 27, 2002. The Student is currently enrolled in the Celantano Museum Academy. Bd. Exh. 5.
3. On March 29, 2006, the Planning and Placement Team ("PPT") convened an annual review meeting to plan evaluations for the Student's triennial review due in March 2007. Bd. Exh. 22.
4. The PPT determined the following evaluations were necessary to complete the Student's triennial evaluation: a psycho-educational evaluation; a speech and language evaluation; and, an evaluation by an occupational therapist. Bd. Exh. 22.
5. On April 3, 2006, the Parent provided consent for the evaluations for the Student's triennial evaluation. Bd. Exh. 22.
6. On August 25, 2006, the Parent requested an independent evaluation to determine whether the Student should receive more services in the regular education classroom. Tr. 7/10/08, pp. 70, 71; Tr. 7/11/08, p. 90; Bd. Exh. 33.
7. The Board agreed to the Parent's request for an independent evaluation, and requested that the Parent provide the Board a list of evaluators. Bd. Exhs. 33, 38.

8. During the Student's 2006-2007 school year, the Student's special education teacher, Donna Esposito, used a home-school communication log for the Student, but at some point during the school year it no longer was returned from home. Tr. 7/11/08, pp. 108, 110.
9. On September 12, 2006, a PPT meeting convened, and it was agreed to increase the Student's services in the regular education classroom, with the exception of a half an hour per week for speech and language services. Tr. 7/11/08, pp. 72, 90; Tr. 7/17/08, pp. 60, 61; Bd. Exh. 35.
10. On September 12, 2006, the Parent agreed with the PPT's program for the Student and withdrew his request for an independent evaluation. Tr. 7/10/08, pp 75-78; Bd. Exh. 35.
11. On September 18, 2006, the Parent made another request for an independent evaluation, to which, the Board, again, agreed and requested the Parent provide a list of evaluators. Tr. 7/10/08, pp. 81, 82; Bd. Exhs. 36-38.
12. The Parent reviewed a list of several potential evaluators he obtained through various agencies and by consultation with an attorney who specializes in the field of special education. The Parent engaged a thorough process of review before selecting an evaluator. Tr. 7/10/08, pp. 36, 82-89; Tr. 7/17/08, pp. 19, 20, 54, 59; Bd. Exh. 41
13. By letter dated October 17, 2006, the Parent requested the Board retain Dr. Kathleen Whitbread to conduct the Student's independent evaluation. Tr. 7/10/08, pp. 36, 37, 89-96; Bd. Exh. 41-43.
14. Dr. Whitbread developed a program called the STAR Project Operational Procedures and Collaborative Consultation Protocol ("STAR Project"). The STAR Project is designed to increase access to the general curriculum for children with significant disabilities, including children on the Autism spectrum. Tr. 7/17/08, pp. 15-18, 25; 53, 61; Bd. Exh. 100
15. Prior to conducting the evaluation, Dr. Whitbread provided the Parent with the STAR Project protocol and procedures, and never represented that the STAR Project employed standardized assessments. Tr. 7/17/08, pp. 20-24, 53; Bd. Exh. 100
16. As part of the evaluation, Dr. Whitbread reviewed the Student's triennial evaluations to be conducted, education records, interviewed the Student's paraprofessional, classroom teacher and PPT members, and observed the Student and staff in the classroom. Tr. 7/17/08, pp. 24, 27-29, 39-47, 62.
17. On December 20, 2006, Dr. Whitbread held a STAR Collaborative Consultation Meeting ("Collaborative Meeting"). The Parent, school staff and Dr. Whitbread were in attendance to discuss the Student's current program, recommendations, and concerns. Tr. 7/10/08, pp. 98-122; Tr. 7/11/08, pp.61; Bd. Exh. 48.

18. During the December 20, 2006, Collaborative Meeting, it was agreed that the Student was academically progressing and behaviorally developing. The Parent's advocate attended, but did not participate. The Parent expressed satisfaction with the Student's increased inclusion, the plan for supervision and safety, and "accommodations and modifications developed for [the Student] to access general curriculum." Tr. 7/10/08, pp. 98-122; Tr. 7/11/08, pp. 62, 63, 90; Tr. 7/17/08, pp. 26, 30, 34, 35; Bd. Exh. 48.
19. In her final STAR Team Report released March 13, 2007, Dr. Whitbread recommended that the Student's program continue as delivered and proscribed in the Student's IEP, to report the Student's progress towards the IEP goals and objectives, that the Student be accompanied at all times on school grounds, communication of all accommodation and modification to the Student's curriculum, and implementation of a home/school communication plan. The Parent agreed with the recommendations. Tr. 7/10/08, pp. 37, 38, 123, 141, 142; Tr. 7/17/08, pp. 25, 33, 48-50; Bd. Exhs. 48, 58, 61.
20. During a follow-up call from the intake coordinator for the STAR Project six weeks after the release of the STAR Team Report, the Parent expressed dissatisfaction with the STAR Project evaluation process. Tr. 7/10/08, pp. 36-60; Tr. 7/17/08, pp. 51, 52
21. Since the Parent's first request for an independent evaluation in September 2006, the Parent never requested an assessment of the Student's special needs for anything other than increasing the Student's access to the mainstream classroom environment. Tr. 7/10/08, pp. 79, 112-120
22. Ms. Esposito exchanged over 70 e-mails over the course of the 2007-2008 school year. Tr. 7/10/08, pp. 158-159; Tr. 7/11/08, pp. 108-110, 113, 114; Bd. Exh. 75.
23. A psycho-educational evaluation of the Student was conducted by Monique Holloway, licensed school psychologist, in March 2007. Ms. Holloway reviewed the Student's educational records, academic records, prior assessments, and IEP. Ms. Holloway also consulted with the Student and staff, observed the Student in the classroom. She administered the Kaufman Assessment Battery for Children, the Adaptive Behavior Assessment System, Second Edition, the Berry Buktenica Developmental Test of Visual and Motor Integration; the Behavior Assessment System for Children (BASC) and the Wechsler Individual Achievement Test II. Tr. 7/11/08, pp. 14, 16-33; Bd. Exh. 22, 59
24. Ms. Holloway requested the Parents assist in her assessments by interview and completion of the rating scales for the BASC administration. Ms. Holloway mailed the rating scales to the Parents with instructions, but they were never submitted. She followed up with calls and phone messages, but was unable to reach the Parents. Tr. 7/11/08, pp 21-25; Bd. Exh. 59
25. Ms. Holloway concluded her evaluation absent the Parent's input, but it did not invalidate her psycho-educational evaluation. Through the evaluation, the Student presented low cognitive skill, but was still able to grasp concepts. She demonstrated weak adaptive skills and conceptual skills, but strong social skills with concerns in functional

- communication. There were no behavioral concerns. The Student would shut down when challenged, but was successfully reengaged with praise. Tr. 7/11/08, pp. 29-31, 93; Bd. Exh. 59.
26. Meaghan Damato, licensed speech and language pathologist, conducted a speech and language evaluation of the Student in March 2007. Ms. Damato reviewed the Student's educational file and observed the Student in the classroom. She administered a functional communication profile, a receptive one word picture vocabulary test, the expressive one word picture vocabulary test, and the test of early language development. Tr. 7/10/08, pp. 131-137; Tr. 7/11/08, pp. 51-54; Bd. Exhs. 22, 60
 27. Ms. Damato's speech and language evaluation found that the Student responded well to positive reinforcement and demonstrated a willingness to learn. She could make requests, refusals and express her basic wants and needs. The Student presented significant receptive and expressive language delays and social delays. She demonstrated difficulty with answering questions, basic concepts, and plurality. Tr. 7/10/08, pp. 131-138; Tr. 7/11/08, pp. 58, 93; Bd. Exhs. 35, 60
 28. In March 2007, Dara Cejas, licensed occupational therapist, evaluated the Student's levels of functioning. Ms. Cejas observed the Student in the classroom for regular classroom activities, as well as specific tasks, as requested by Ms. Cejas. Tr. 7/17/08, pp. 70; Bd. Exhs. 22, 60a
 29. Ms. Cejas' evaluation found the Student presented high function for sensory motor, gross motor, self care, fine motor and visual motor skills. The Student was distractible, but easily redirected to task, and had low muscle tone in her hand that impacted her grasp particularly writing and design. Tr. 7/17/08, pp. 72-74
 30. The Student's triennial review PPT took place on March 20, 2007. The PPT reviewed the Student's psycho-educational evaluation, speech and language evaluation, occupational therapy evaluation, and Dr. Whitbread's STAR evaluation report. Tr. 7/10/08, pp. 124-133, 138, 140; Tr. 7/11/08, pp. 92, 94; Tr. 7/17/08, p. 75; Bd. Exhs. 59-61
 31. The Parent did not express any disagreement with any of the evaluations conducted for the Student's triennial review, and indicated he was satisfied with the Student's program for inclusion. The PPT agreed that the evaluations were consistent with their observations of the Student. Tr. 7/10/08, pp. 139-141; Tr. 7/11/08, pp. 33, 34, 59, 60, 92-94; Tr. 7/17/08, p. 75.
 32. During the June 14, 2007, PPT meeting Ms. Damato gave the Parent a graph that summarized the Student's speech and language progress. Parent Exh. 1.
 33. By letter dated December 20, 2007, the Parent expressed dissatisfaction with Dr. Whitbread's evaluation and requested another independent evaluation at Board expense. Tr. 7/10/08, p142

34. On March 19, 2008, the PPT conducted the Student's annual review, and determined that the Student made significant progress on the goals and objectives as set forth in the Student's IEP. The Parent agreed that the Student made progress. Tr. 7/10/08, pp. 139-141; Tr. 7/11/08, pp. 33, 34, 59, 60, 78; Bd. Exh. 75.
35. On March 19, 2008, the PPT proposed new IEP goals and objectives based on the triennial evaluation reports and the Student's current levels of performance. The Parent did not express any disagreement with the PPT's proposed goals and objectives. Bd. Exh. 75.
36. During the end of May 2008, the Parent expressed concerns with the Student's hand strength. Ms. Cejas, communicated with the Parent and suggested activities to help the Student improve hand strength. Tr., 7/17/08, pp. 74, 82.
37. During the June 14, 2008, PPT meeting it was determined that the Student continued to make progress toward the IEP goals and objectives. The Student has made progress socially, behaviorally, with self-help skills, in the ability to communicate, reading, writing, in mathematics, and decoding skills. Tr. 7/11/08, pp. 35-37, 63, 64, 80, 95-106; Bd. Exh. 67

CONCLUSIONS OF LAW

In accordance with 34 C.F.R. §300.502(b)(1), a parent is entitled to an independent educational evaluation at board expense if the parent disagrees with an evaluation *obtained by the board*. (emphasis added)

In this particular case, the record reveals that prior to the hearing, when the Parent expressed dissatisfaction with an evaluation, it was regarding Dr. Whitbread's evaluation. Although the Parent attempts to deny he selected Dr. Whitbread, and that her selection was instead, made by an attorney that he consulted, but did not retain, the facts prove otherwise. As evidenced by the Parent's signed letter dated October 17, 2006, and Dr. Whitbread's follow-up e-mail dated October 18, 2006, to Loretta King, Supervisor of Special Education, it is clear that Dr. Whitbread was personally selected by the Parent. The evaluation by Dr. Whitbread is considered an evaluation obtained by the Parent, and not a board initiated evaluation, as proscribed in 34 C.F.R. §300.502(b)(1). As such, the Parent is not entitled to an independent evaluation.

The fact is clear that Dr. Whitbread was selected by the Parent, thereby negating the Parent's claim to another independent evaluation. Yet, the Parent further claims that he was

misguided as to how Dr. Whitbread would evaluate the Student. Despite this claim, the record is fraught with evidence that the Parent was well-informed of the type of program and procedures engaged by Dr. Whitbread. A preponderance of the evidence establishes that at the time the Parent secured Dr. Whitbread's services, at Board expense, he specifically requested that the Student's program be reviewed for additional inclusion in the regular education classroom. He requested no other evaluations, nor did he express any other concerns when Dr. Whitbread was selected. Dr. Whitbread's STAR Project, solely focuses on mainstream inclusion, and does not utilize standardized assessment tools to ascertain any other special needs. As testified by Dr. Whitbread, "[t]he whole thrust of this program is to increase kid's time in regular classes." She informed the Parent of the mission of her program, and coupled with the suggestion from an attorney with a longstanding career in special education, it was agreed that not only was the Student a good fit for the program, but also, that the program was a good fit for the Student, particularly since the Parent only expressed a desire to increase the Student's time in the regular education classroom.

The Parent's reasoning in this matter has been scattered. Approximately six weeks after Dr. Whitbread's report was released the Parent expressed dissatisfaction with Dr. Whitbread's evaluation. In the meantime, while the Parent was concentrating on what he perceived to be an insufficient evaluation because it did not assess the Student for social, speech, behavioral, occupational, psychological, and academic deficiencies, the PPT convened for the Student's triennial review with several meetings to follow. The Parent was in attendance at these meetings, and once the Student was evaluated in each of the foregoing areas, the Parent expressed no dissatisfaction concerning the triennial evaluations, the Student's progress, or the program devised for the Student's IEP. Instead, the Parent continued to express dissatisfaction with Dr. Whitbread's evaluation.

During the hearing, the Board offered the Parent a Board initiated independent evaluation, even after the triennial evaluations were conducted and accepted for review. The Parent refused the Board's offer, claiming that he did not trust anyone selected by the Board. The Parent further attempted to inject belated complaints regarding the Board's triennial evaluations and the Student's disability label into the proceedings. Complaints that were not made in his request for hearing, nor during the prehearing conference, were suddenly being made by the Parent during the hearing. However, the undersigned deems such complaints as highly

prejudicial, providing the Board insufficient notice of the claims against it, and not within the jurisdiction of this hearing officer to review.

FINAL DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, this case is hereby **DISMISSED** with prejudice.

Comment: The record reflects that the Parent, often cannot recall information and, at times, misunderstands the terminology used in correspondence and meetings with the Board (for example: how to read a graph, meaning of the term “inclusion”, meaning of the terms “accommodations and modifications”, etc.). His complaints are inconsistent, and appear to change to whatever he understands qualifies as a prima facie claim at that point in time.

The Parent attended the hearing ill-prepared. Specifically, the Parent: was ready to end on the first day, a previously scheduled, and agreed upon, two-day hearing that was confirmed by written notice; attended the hearing without any of the Board’s exhibits for reference; was unprepared with no witnesses to call and no timely exhibits to submit; and appeared inattentive, with his eyes closed, during the entire direct examination of a witness.

The Parent’s professed interest in his child’s program is praiseworthy. However, either he is profoundly incapable of recalling and/or understanding information, or he is harboring sentiments towards the Board that are clouding his judgment and ability to sensibly recognize attainable goals and objectives for the Student within the Board’s authority to address. Regardless of the impediment, a cooperative effort on the part of the Board, though not ordered, to clarify and define its proposed actions in more basic terms, may result in better comprehension and retention of information by the Parent, unless otherwise unachievable through such means.