

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Westport Board of Education v. Student

Appearing on Behalf of the Parents: Parents, *Pro Se*

Appearing on Behalf of the Board: Marsha B. Moses, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Ct 06460

Appearing Before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Was the psychological evaluation performed by the Board appropriate?

SUMMARY:

The Student has been identified as Other Hearth Impaired and is entitled to receive a free and appropriate public education (FAPE) as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At a planning and placement team (PPT) meeting, the Parents rejected the psychological evaluation performed by the Board.

The Parents requested the Board to pay for an independent psychological evaluation. Their request was denied and the Board filed a request for a due process hearing.

PROCEDURAL HISTORY:

This matter was heard as a contested case pursuant to Connecticut General Statutes (CGS) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

On June 11, 2012, the Board received notice of the Parents' request for due process. An impartial hearing officer was appointed on June 11, 2012 and a pre-hearing conference was held on June 26, 2012. At the pre-hearing conference the Parents had an advocate present to assist them with the pre-hearing conference and the Parents advised the hearing officer that they were going to retain an attorney. The Parents would advise the hearing officer of the name of the attorney. The Parents did not advise the hearing officer if they retained an attorney. At the due process hearing the Parents represented themselves.

The matter proceeded to hearing on August 1, 2012. The Parents presented four exhibits. Only Exhibit No. 1 was accepted as a full exhibit of the hearing. Exhibits No. 2 and 3 were found not to be relevant and Exhibit No. 4 was an incomplete report. The Board presented twenty-two Board Exhibits for the hearing. The Board's Exhibits were received as full exhibits of the hearing.

The Parents expressed concern with the Student's classification and his progress. The Parents were advised that the issue of the hearing was the appropriateness of the psychological evaluation performed by the Board. No other issue had been raised at the pre-hearing conference nor had any request to amend the due process hearing been filed.

At the hearing, the Parents requested that the matter be continued in order to allow them to retain an attorney. The request was denied. The Parents at the pre-hearing conference had stated that they were going to retain an attorney and were advised to inform everyone if they retained an attorney. As previously stated, the Parents appeared Pro Se. At the commencement of the hearing the Parents did not state that they were in the process of retaining an attorney or needed additional time to retain an attorney but proceeded with the matter. At the time that the Parents requested additional time to retain an attorney, the Board was in the process of examining their last witness and would have been prejudiced as well as having to expend additional funds if the matter had been postponed.

The Parents did not present any witnesses in the hearing.

This Final Decision and Order set forth the Hearing Officer's summary, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the Summary and Proposed Findings of Fact actually represent conclusions of law, they should be so considered by the Hearing Officer and vice versa, SAS Institute, Inc. v. S&H Computer Systems, Inc., 605 F. Supp. 816 (M.D. Tenn. 1985); Bonnie Ann F. v. Callallen Ind. Sch. Bd., 835 F. Supp. 340 (S.D. Tex. 1993). The mailing date of the Final Order and Decision is August 24, 2012.

FINDINGS OF FACTS:

1. The Student is a student eligible to receive special education and related services with a diagnosis of Other Health Impaired due to a seizure disorder. (Board's Exhibit ¹-9)
2. At the March 31, 2011 PPT meeting, the team recommended evaluations to review the Student's cognitive functioning and processing, memory, executive function, social-emotional functioning, and to include an updated developmental history, classroom observations and functional assessments. These evaluations were to plan the Student's triennial evaluation. The Parents were in agreement with the evaluations. (Testimony of Psychologist, B-2)

¹ Hereafter Board's Exhibits shall be noted as "B" followed by the exhibit number.

3. The psychologist started the evaluation with classroom observations and a review of the Student's school record and prior psychological evaluations. The classroom observations were performed in the large social studies class and also in a small group language arts class. The evaluator conducted the Student's "lunch bunch group." (Testimony of Psychologist, B-4)
4. The psychologist performed various assessment procedures over seven testing sessions which is more than normal due to the Student's significant lapses in attention. (Testimony of Psychologist, B-4)
5. The evaluations were reviewed at the March 1, 2012 PPT. They reflected a pattern of strengths and weakness. As instructions became more abstract to the Student, he would have more problems understanding which would impact his educational progress. (B-4, Testimony of Psychologist)
6. The Student's cognitive function was assessed through the administration of the Wechsler Intelligence Scale for Children IV (WISC-IV) and the WISC IV Integrated, Selected Subsets. Test performance suggested significant variability, with a profile of relative strengths and continued and significant weaknesses. To assess the Student's ability to engage in goal-directed, purposeful behaviors for efficient task completion and to regulate his cognitive, emotional and behavioral functioning, several subsets of the Delis Kaplan Executive Function System (d-KEFS) and the Behavior Rating Scale of Executive Function (BRIEF) were administered. (B-4)
7. The Student's emotional, behavioral and adaptive functioning was assessed through administration of the Behavioral Assessment System for Children (Second Edition) (BASC-2). The Parents, Student and four of his teachers participated in this assessment. Inconsistencies were noted in the responses of both parents' and teachers' rating. These inconsistencies in response may reflect the inconsistencies of the Student's behavior across settings. (B-4)
8. The Parents were dissatisfied with the evaluation and requested another PPT. On June 1, 2012, the Board granted their request and conducted another PPT. The Board provided the Parents with the district's criteria for independent evaluation. (B-13)
9. The psychologist investigated all areas of suspected disabilities and concerns of the Student. The evaluator used legitimate accepted instruments for her assessments. There is nothing further that can be attained from another psychological evaluation. (Testimony of Psychologist)
10. The Parents were concerned with the change in classification from Speech and Language Impaired to Other Health Impaired. The Parents request for an independent psychological evaluation was refused by the PPT. (B-11, B-13)

CONCLUSIONS OF LAW:

1. It is undisputed that the Student is entitled to receive special education and related services to obtain FAPE under IDEA, 20 U.S.C. §1401 et. seq. FAPE is defined as special education and related services that are provided at public expense, meet the standards of the state educational agency, include an appropriate school education, and that are provided in conformity with the IEP. 20 U.S.C. §1401(8).

2. The Board brought this action in accordance with the IDEA which provides for special education and related services to children with disabilities, from birth through age 21.

3. The Board filed this request for hearing in accordance with the provisions of 34 CFR Section 300.502(b) which provides that if “a parent requests an independent evaluation at public expense, the public agency must, without unnecessary delay . . . [f]ile a due process hearing to show that its evaluation is appropriate...” if the Parents’ request is not granted. The sole issue to be determined is whether the Board’s psychological evaluation is appropriate.

4. In determining the standard of appropriateness of an evaluation, the focus is on whether the evaluation (1) used a variety of essential tools; (2) was administered by trained, knowledgeable, and qualified personnel; (3) was administered and conducted under standard conditions and in accordance with instructions provided by the producer of the assessments; (4) incorporated various information sources such as classroom observations and review of existing data; and (5) whether the independent information would provide any new or additional information. Warren G. v. Cumberland County School District, 190 F.3d 80, 87 (3rd Cir. 1999)

5. The psychological evaluation conducted by the Board’s psychologist complied with all professional standards and was appropriate. The individual conducting the psychological evaluation was well qualified, thoroughly trained, skilled and knowledgeable, with appropriate credentials for completing the assessment. She is a Nationally Certified School Psychologist who has published in the field of executive functioning and cognitive-behavioral interventions in the school setting.

6. The psychologist directly observed the Student and reviewed the data. She reviewed the consultant’s report and concurred in her results. Thus, the level of professionalism and quality of the assessment is appropriate.

7. The psychological evaluation used multiple tools and assessments, which further leads to the conclusion that this assessment was appropriate. The evaluation consisted of both indirect and direct assessment: data collection across multiple environments, direct observations of the student, standardized questionnaires of staff and the student, review of records, staff consultation and data analysis. This protocol was followed and set forth in great detail in the comprehensive report. The psychological evaluation is clearly appropriate in its use of nondiscriminatory assessments tools which included two

observations. There is no additional or better information that could be obtained from another psychological evaluation.

8. To the extent a procedural claim raised by the Parents is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

FINAL ORDER AND DECISION:

The psychological evaluation performed by the Board is an appropriate evaluation and meets all the criteria of an appropriate evaluation as set forth in the IDEA.