

October 29, 2018

Case No. 19-0038

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Redding Board of Education v. Student

Appearing on behalf of the Parents:

Parents, *pro se*

Appearing on behalf of the Board:

Attorney Michelle Laubin
Berchem Moses PC
75 Broad St.
Milford, CT 06460

Appearing before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Was the Functional Behavioral Assessment (“FBA”) of the Student conducted in May, 2018 by Lindsey Decima, BCBA, and discussed at the June 19, 2018 PPT meeting, appropriate, or is the Student entitled to an Independent Educational Evaluation (“IEE”) at the District's expense?

PROCEDURAL HISTORY:

The Due Process Hearing Request in this case was initiated by the Redding Board of Education (“Board”) on July 18, 2018 to show that the FBA dated May 31, 2018 was appropriate. This Impartial Hearing Officer was assigned to the case on July 18, 2018.

At the pre-hearing conference convened on July 24, 2018, Attorney Lawrence Berliner appeared on behalf of one of the Parents, one Parent appeared *pro se*, and Attorney Michelle Laubin appeared on behalf of the Board of Education. Evidentiary hearing dates were scheduled for August 24 and 30, 2018, with the deadline for mailing the final decision set for September 25, 2018. On August 20, 2018, the parties' attorneys jointly requested postponement of the first hearing date, as they were engaged in settlement discussions. On August 28, 2018, on the grounds that they were still negotiating, the parties' attorneys then jointly requested postponement of the second hearing date, which was granted. A new hearing date of September 27, 2018 was scheduled and the date for mailing the decision was extended to October 29, 2018. On or about September 7, 2018, Attorney Berliner withdrew from representing Parent. Both parents were self-represented thereafter, including at the hearing.

The hearing convened on September 27, 2018, and concluded on that date. Neither side requested the filing of briefs in the matter. The deadline for the Final Decision and Order is October 29, 2018.

The following witnesses testified at the evidentiary hearing on September 27, 2018:

Lindsay Decima, M. A., BCBA

Cynthia Twiss, M. S. Ed., Interim Director of Special Education

Parent

Parent was also present at the hearing.

Hearing Officer Exhibit HO-1 and HO-2 were entered as full exhibits.
Board Exhibits B-1 through B-63 were entered as full exhibits.
The Parents offered no exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S&H Computer Systems, Inc.* 605 F. Supp. 816 (M. D. Tenn., 1985) and *Bonnie Ann F. v. Calallen Independent School Board*, 835 F. Supp. 340 (S. D. Tex., 1993)

SUMMARY:

The seven-year old Student has been attending the Redding Elementary School and has recently begun the second grade. He is identified as a student with Autism that requires special services. An FBA was conducted during the last months of the Student's first grade year by Lindsey Decima, the school's Board Certified Behavior Analyst. The FBA was completed May 31, 2018 and presented for review at the June 19, 2018 Planning and Placement Team ("PPT") meeting. The FBA was performed with standard testing and protocols, use of classroom observation and interviews, and was used to further develop the Student's existing Individualized Education Program ("IEP"). One of the Parents disagreed with the results of the evaluation and requested an Independent Educational Evaluation ("IEE") at public expense. The Board initiated the Request for Due Process within a short time thereafter and a hearing was convened. The Hearing Officer found the evaluation to be appropriate and sufficient and that the Parent was not entitled to an IEE at public expense.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, and in accordance with the Connecticut Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

After considering all of the evidence submitted by the parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Currently, Student is seven years of age (DOB 1/5/11) and is enrolled in the second grade at Redding Elementary School ("RES"). (HO-2)
2. On December 12, 2013, the Student was determined to be eligible for special education and related services under the identification of Autism. (HO-2)
3. The Student was re-determined to be eligible for special education services in December, 2016, under the category of Autism. (HO-2)

4. Currently, Student receives 30 minutes of social skills instruction pull-out each week, 30 minutes of speech and language services twice a week, 30 minutes of social skills support and support from a special education teacher in class 9 times per week for 30 minutes. (B-50)
5. Although the Student was and is academically performing at grade level, by first grade impairments in the areas of behavior, social skills and executive functioning began to affect his ability to learn and to interact with his teachers and peers. (B-50)
6. During the period between September to December 2017, some of the challenging behaviors that the Student was engaging in during the school day were gradually increasing in frequency and intensity. (B-50)
7. The PPT school team began to use a tallying system to monitor and analyze the nature of Student's interactions with teachers and peers. (B-50)
8. During the 2017-2018 school year, the team received enough data to reach the conclusion the Student's behavior was becoming an impediment to his educational progress. (B-50)
9. These behaviors included off-task activity, non-compliance, and were beginning to include unsafe conduct. (B-50)
10. At the PPT held on February 15, 2018, the team discussed conducting an FBA to assess the functions of Student's behaviors, and both Parents gave their consent. (Testimony, Decima)
11. The Student was examined and observed by Lindsey Decima, the school's BCBA, on numerous instances between February and April, 2018. (Testimony, Decima)
12. Ms. Decima is a graduate of Union College, and has a Master's Degree from University of Massachusetts in Teacher Education. (B-62)
13. Ms. Decima is a Board Certified Behavior Analyst, and has a Certificate in Applied Behavior Analysis, having received training and experience in teaching children diagnosed with Autism since 2007. (B-62)
14. Ms. Decima personally observed Student in class on two occasions in late February, 2018. (B-50)
15. On March 5, 2018, one Parent rescinded consent for the FBA and the FBA was not recommenced until March 22, 2018. (B-50)
16. Ms. Decima then conducted five more visits to the classroom to observe Student and his interactions with teachers and peers. (B-50)
17. While during the majority of the observations Ms. Decima did not observe disruptive or inappropriate behavior, several instances of potentially dangerous or unsafe conduct were observed by Ms. Decima, including on the last day, when Student engaged in aggressive and defiant behavior in several aspects. (B-50)
18. Ms. Decima also used "indirect assessments" such as questionnaires and interviews of the teachers and Parents to develop the FBA. (b-50)
19. Ms. Decima also used "ABC" data assessment to record situational factors surrounding a problem behavior. Antecedent-Behavior-Consequence data is recorded and used to evaluate the triggers and results of actions as they occur. (B-50)
20. Ms. Decima's report of the testing and observations was discussed at two scheduled PPT meetings, where the Parents were present, and her report identified the functions of Student's behavior as an escape from a task, continued access to a tangible item, and to obtain attention from others. (B-50)
21. The Student's IEPs have included certain modifications and accommodations to address his needs and circumstances, and the June 19, 2018 IEP contained additional recommendations made by Ms. Decima. (B-50, B-56)
22. One of the Parents disagrees with some of the conclusions and interpretations of the testing by Ms. Decima. (B-50, B-56)
23. Ms. Decima recommended formulating and implementing a Behavior Intervention Plan ("BIP")

- to decrease Student's targeted behaviors, in collaboration with Parents and staff. (B-50, B-56)
24. Ms. Decima also recommended that Student be assigned a behaviorally trained paraprofessional to support him throughout the day. (B-50, B-56)
 25. Ms. Decima recommended the BIP should address strategies to lessen or avoid inappropriate behaviors, help Student self-regulate his own behaviors, increase social thinking and communication skills, and provide functional communication training ("FCT"). (B-50, B-56)
 26. One of the Parents requested an independent IEE at the PPT held on June 19, 2018. (B-56)

CONCLUSIONS OF LAW AND DISCUSSION:

If a student receives an evaluation with which the parent disagrees, a parent has the right to request an IEE at public expense. 34 C.F.R. §300.502, R. C.S.A. §10-76d-9(c)(1), (2)

If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure either an IEE is provided at public expense, or initiate an impartial hearing to show that the evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria. 34 C.F.R. §300.502, R.C.S.A. §10-76d-9(c)(2).

Parent informed the Board that she disagreed with the Board's evaluation and requested a publicly funded IEE. The Board timely filed this Due Process Request to determine whether its evaluation was appropriate and met the stated purpose of 34 C.F.R. §300.301-300.305.

The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 C.F.R. §300.521. R.C.S.A. §10-76h-14(a). The purpose of an evaluation is to determine if the student is a child with a disability under §300.8 and eligible for special education, and to determine the educational needs of the child. 34 C.F.R. §300.301(c)(2)

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 information from various sources such as classroom observations and review of existing data; and (5) whether the independent evaluation would provide any new or additional information. 34 C.F.R. §300.304(c), §300.305 See, *Westport Board of Ed. v. Student, Final Decision and Order 11-0355 (Conn. 2011)*, *Warren G. v. Cumberland County School District, 190 F.3d 80, 87 (3rd Cir. 1999)*, *S. Kingstown Sch. Comm. v. Joanna S., 773 F.3d 344 (1st Cir. 2014)*, *Doe v. Cape Elizabeth School District, 832 F.3d 69 (1st Cir. 2016)*

The Board's evaluation was appropriate and meets the stated purpose of 34 C.F.R. §300.301-300.305.

The BCBA was a highly trained and experienced BCBA who was familiar with the student's disability, and familiar with the behavioral challenges that the staff has reported and the BCBA observed herself. R.C.S.A §10-145d-560, 34 C.F.R. §300.502(b)(2)(ii)

It is found by a preponderance of the evidence that the FBA met the standard of appropriateness, in

that: 1) the person conducting the FBA was very qualified to conduct an evaluation of the Student; 2) she administered essential tests to the Student under standard conditions; and 3) reviewed the data collected and the records comprising the Student's educational and psychological background, in addition to observing the Student, the Student's parent and teachers; 4) and used the information to make recommendations as to the Student's performance.

One of the Parents testified but did not call any witnesses at the hearing. The Parent did not offer other evidence to support her claim that the Board's evaluation was inadequate or failed to meet the compliance standards set forth in 34 C.F.R. §300.301-305 and R.C.S.A. §10-7d-9(a) and (b). It appeared that the other Parent did not object to the adequacy of the FBA at this point in time.

FINAL DECISION AND ORDER:

1. The Board's Functional Behavior Assessment is appropriate, and sufficient to develop the Student's Individualized Education Plan to provide a Free and Appropriate Public Education to the Student.
2. Parent is not entitled to an Independent Educational Evaluation at public expense at this time.