

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Wilton Board of Education v. Student

Appearing on behalf of the Parent:

Pro Se, Parent

Appearing on behalf of the Board:

Attorney Linda Yoder  
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One Constitution Plaza  
Hartford, CT 06103-1919

Appearing before:

Attorney Raymond J. Rigat  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Are the Board evaluations appropriate?
2. If not, is the Parent entitled to an independent educational evaluation, (“IEE”) at public expense?
3. Is the Parent entitled to reimbursement for the private evaluation performed by Dr. Kruger?

**PROCEDURAL HISTORY:**

On March 20, 2019 the Board requested a Due Process Hearing under 34 C.F.R. 502(b)(2)(i), because it denied the Parent’s request to be reimbursed for the evaluation conducted by Robert S. Kruger, Ph.D. A prehearing telephone conference was conducted on April 8, 2019. At this conference, the Parent indicated that he would be filing a formal request for an Independent Educational Evaluation, (“IEE”), in addition to his request for reimbursement. The Board indicated that upon receipt of the Parent’s request for an IEE, it would file an amendment to its request for a Due Process Hearing. The Parent requested an IEE later that day, and the Board filed an amended request for a Due Process hearing on April 9, 2019.

The hearing convened on June 4, 2019, and concluded that same day. Both parties made closing arguments and submitted briefs in support of their respective positions.

The Board called four witnesses: (1) Ms. Michele Porter, School Psychologist; (2) Ms. Stephanie Seanor, Occupational Therapist; (3) Ms. Elizabeth Caridi, Special Education teacher; and (4) Ms. Andrea Leonardi, Assistant Superintendent of student services.

The Parent called three witnesses: (1) Robert S. Kruger, Ph.D., Psychologist; (2) Ms. Michele Porter, School Psychologist; and (3) himself.

The parties jointly submitted exhibits, marked as Board Exhibits B-1 through B-24. The Parent submitted an additional exhibit, marked as P-25 (Dr. Kruger's curriculum vita). These exhibits were entered as full exhibits.

The Board and the parent submitted post hearing briefs in support of their respective positions. In his post hearing brief, the Parent requested that the Hearing officer award an additional \$ 1,000 for expert witness fees for Dr. Kruger who testified at the hearing. The Board has objected to this request.

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 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 ("UAPA"), CGS §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

#### **FINDINGS OF FACT:**

1. The Student is fourteen years old and in the eighth grade. (B-7).
2. The Student has an IQ of 118, placing him in the 88<sup>th</sup> percentile (high average range). (B-7)
3. The Student has difficulty completing writing assignments and handing in school work assignments. (B-7).
4. The length of his written work is often short, displays poor organization and does not reflect his thoughts and oral language skills. (B-7).
5. Writing difficulties were noted while the Student was in elementary school, and again in the sixth grade. (B-7).
6. The Parent testified that the Student has been struggling in school for years and with writing since the second grade. (Testimony of Parent).
7. The Student's completed assignments were often incomplete or poorly written. (B-7).

8. The Student's writing was often short and simplistic, lacking elaboration and supporting information. (B-7).
9. The Student was better able to complete his work when teachers met with him to create school assignments that were more interesting for him and to help him brain storm what he would say in his writing. (B-7).
10. The Student's writing difficulties increased in the seventh grade. (B-7).
11. The Student became easily distracted and off-task while doing work in the classroom; work completion became very low and his grades suffered. (B-7).
12. The Student needs a daily plan to assist him in determining what assignments need to be completed and needs extra time to finish work even when the requirements of his assignments have been reduced or otherwise modified. (B-7).
13. The Student's teachers believe that he is knowledgeable, insightful, and well spoken; but that something is preventing him from placing his thoughts on paper and that current (extensive) interventions have not been sufficient to improve the Student's writing and work completion skills. (B-7).
14. The Parent requested an evaluation of the Student and the school agreed to an initial evaluation to determine if the Student was eligible for special education and related services. (Testimony of Porter).
15. The Parent provided consent on November 28, 2018, for the Board to conduct an initial evaluation of the Student to include the following:
  - Standard individualized assessment in the areas of cognitive and executive functioning to be performed by the school psychologist;
  - Individualized/ Standardized testing in reading, writing, and math by a special education teacher;
  - Behavior rating scales (social, emotional, and behavioral) measured by the school psychologist;
  - Social history evaluation by the school social worker;
  - Classroom observation for classroom behavior by the guidance counselor;
  - Standard assessment for visual-motor skills by the school occupational therapist. (B-4)
16. The Student was provided: an occupational therapy evaluation completed on 01/03/2019 (B-6); a psychological evaluation conducted in December 2018 (B-7); and an academic achievement evaluation completed on December 21, 2018 (B-8).
17. The Occupational Therapy Evaluation was conducted by Stefanie Seanor, an occupational therapist with over eighteen years-experience utilizing the following evaluation tools:

- Beery-Buktenica Developmental Test of Visual –Motor Integration, 6<sup>th</sup> Edition;
  - Beery VMI Developmental Test of Visual Perception;
  - Beery VMI Developmental Test of Motor Coordination;
  - Clinical observations including typing speed; and
  - Record review. (B-21).
18. The Psychological Evaluation was conducted by Ms. Michelle Porter, MS, Ed., P.D., (Professional Degree), who at the time had nearly nine years- experience as the school psychologist for the Wilton Public Schools. (B-19).
19. Ms. Porter administered the following tests and assessment procedures;
- Review of Records;
  - Informal Student interview;
  - Wechsler Intelligence Scale for Children-5<sup>th</sup> Edition (WISC-5);
  - Wide Range Assessment of Memory and Learning-Second Edition (WRAML-2);
  - Integrated Visual & Auditory 2 Continuous Performance test (IVA-2);
  - Behavior Assessment System for Children-Third Edition (BASC-3), Teacher, Self, (the Parent portion not having been completed because the Parent failed to return survey questionnaire);
  - Behavior Rating Inventory of Executive Function (BRIEF) Teacher;
  - Conners-Third Edition (Conners-3) Teacher, (Parent portion not completed). (B-7).
20. Ms. Porter’s report states that the Student was referred for evaluation due to difficulties with writing and work completion; further, that the results of her evaluation indicated that the Student has a well-developed verbal reasoning system with strong word knowledge acquisition, effective information retrieval, a solid ability to verbally reason, and effective communication of knowledge. (B-7).
21. Ms. Porter’s report notes executive functioning weaknesses and recommended that the Student receive explicit instruction to improve executive functioning skill weaknesses associated with the writing process, and that he receive additional time to complete homework and assignments. (B-7).
22. The Academic Achievement Evaluation was performed by Ms. Betsy Caridi, M.A., a special education teacher with three years- experience in the Wilton Public Schools, and thirteen years previous experience as a teacher of the visually impaired (and resource room teacher) for the Darien Public Schools. (B-18).
23. Ms. Elizabeth Caridi performed the Academic Achievement Evaluation which assessed the Student’s skills in the areas of reading, writing and math. She administered the following tests:
- Wechsler Individual Achievement Test-Third Edition (WIAT-III); and

- Test of Written Language-4/Form A. (Testimony of Ms. Caridi; B-8).
24. The results of Ms. Caridi’s testing placed the Student in the average to above average range in all areas tested. (B-8).
  25. The Student was privately evaluated at the Parent’s expense by Robert S. Kruger, Ph.D., on the following dates: 01/18/2019; 01/22/2019; 02/05/2019; 02/06/2019; 02/10/2019; 02/11/2019; 02/12/2019. (B-9).
  26. Dr. Kruger did not interview school staff or make observations of the Student in a classroom setting. (Testimony of Kruger).
  27. A second PPT took place on March 5, 2019, to review the Board’s evaluation. The team determined that the Student was eligible for special education under the category of specific learning disability-written expression. (B-10).
  28. The PPT recommended that the Student receive an assistive technology evaluation. (B-10), which was performed by Ms. Michelle Bragdon-Place, (M.S., OTR/L, ATP, Registered/Licensed Assistive Technology Professional Occupational Therapist), to look into technology that might support the Student’s needs. (B-13; B-22).
  29. Ms. Bragdon-Place began her part of the evaluation process with a trial of Read&Write for Google Chrome which is a subscription based Google Chrome extension that provides personalized support to make documents, web pages, and common file types in Google Drive more accessible to the Student. It’s designed to help students engage with digital content in a way that suits their abilities and learning styles. (B-13).
  30. Ms. Bragdon-Place recommended that the Student have access to Read&Write for Google Chrome through his already existing account and should be encouraged to use the features of the program for his classroom assignments. Further, that the Student should be: given access to all graphic organizers in digital form to facilitate the organization of his written output; encouraged to utilize various features of Google Keep to help him organize and provide reminders; encouraged to use color coded folders; given access to Google calendar and be encouraged to use it digitally to organize assignments and set reminders for due dates; provided (along with his team) a ½ hour assistive technology consultation session to follow up with Ms. Bragdon-Place’s recommendations. (B-13).
  31. At the initial Prehearing Conference—April 8, 2019—the Parent expressed his disagreement with the Board’s evaluation and submitted a written demand for an IEE later that day. (Amended Petition.)

### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. Under 20 USC § 1415(b)(1) of the Individuals with Disabilities Education Act, (“IDEA”), and its implementing regulations, a parent of a child with a disability has the

right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to certain conditions. 34 CFR § 300.502(b)(1). This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability. OSERS *Letter to Carroll*, October 22, 2016.

2. Under 34 CFR § 300.502(b)(2), if a parent requests an IEE at public expense, the agency must, without unnecessary delay, either:
  - (i) initiate a hearing under 34 CFR § 300.507 to show that its evaluation is appropriate; or
  - (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
3. The public agency, however, has a right to deny reimbursement without filing for a due process hearing when a parent requests reimbursement for an IEE prior to the completion of the district's evaluation. 34 CFR § 300.502(b)(2)(i); OSEP *Letter to Zirkel*, December 11, 2008.
4. The Board argues that its evaluation of the Student was not completed, and as a result there was no evaluation in which the Parent could disagree. The Board's evaluation consisted of several constituent parts: (1) the 01/03/19 Observation Report by B. O'Brien, (B-5); (2) the 01/03/2019 Occupational Therapy Evaluation Summary by S. Seanor, (B-6); (3) the 01/04/2019 Psychological Evaluation by M. Porter, (B-7); (4) the January 2019 Academic Achievement Evaluation by B. Caridi, (B-8); and (5) the 03/20/2019 Assistive Technology Evaluation by M. Bragdon-Place, (B-13). (Finding of Fact 30).
5. Dr. Kruger's evaluation was initiated on 01/19/2019 and completed on 02/12/ 2019, (Finding of Fact 19). The Board had a right to deny reimbursement under 34 CFR § 300.502(b)(2)(i).
6. Further, 34 CFR § 300.502(b)(2)(ii) requires reimbursement only "if the evaluation obtained by the parent meets agency criteria."
7. The Board's criteria for IEE's, requires that "the evaluator must be permitted to directly communicate with school staff who work with the child in school... as well as to obtain information from and share information with the school prior to, and during the evaluation process." (B-14). Moreover, the Board requires that "[t]he evaluator must obtain and consider school information and observations of the child in the school setting in the evaluation process and the written report. All in-school observations as part of an IEE must be scheduled in advance with the Assistant Superintendent of Schools for Student Services or his/her designee." (B-14). Dr. Kruger's evaluation did not meet this criteria for purposes of reimbursement.

8. Dr. Kruger did not observe the Student in a school setting and did not speak to any school staff when conducting his assessment. (Finding of Fact 24). Moreover, Dr. Kruger does not appear to have considered his evaluation as an IEE: “The current evaluation was designed to supplement the evaluation performed at school in order to assist [the Parent in planning for [the Student],” (Finding of Fact 22).
9. The evaluation procedures at 34 CFR § 300.304(b)(1) require that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether the child is a child with a disability and the content of the child’s individualized education program, (“IEP”), including information related to enabling the child to be involved in and progress in the general education curriculum.
10. The public agency must ensure that in evaluating each child under 34 CFR §§ 300.304 through 300.311 the evaluation is sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child’s special needs, whether or not commonly linked to the disability category in which the child has been classified. 34 CFR § 300.304(c) (4) and (6).
11. In determining the appropriateness of the public agency’s evaluation, several factors should be considered, including 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 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 CFR § 300.304(c), 300.305; *see Doe v. Cape Elizabeth School District*, 832 F.3d 69 (1<sup>st</sup> Cir. 2016); *Kingstown Sch. Comm. V. Joanna S.*, 773 F.3d 344 (1<sup>st</sup> Cir. 2014); and *Warren G. v. Cumberland County School District*, 190 F.3d 80, 87 (3<sup>rd</sup> Cir. 1999).
12. The evaluation conducted by the Board was appropriate and comprehensive incorporating several evaluation tools administered by qualified individuals and assessed the Student in all areas of suspected disability.
13. The Parent is therefore not entitled to a publicly funded IEE.

### **FINAL DECISION AND ORDER**

1. The Board’s evaluations were appropriate.
2. The Parent’s is not entitled to an IEE at public expense.
3. The Parent is not entitled to reimbursement for the private evaluation performed by Dr. Kruger.
4. The Board is not required to reimburse Parent for the expense of Dr. Kruger’s testimony at the Hearing, because although a federal district court can award attorney’s fees to a

prevailing party in an IDEA case under 20 USC § 1415(i)(3)(B), the court does not jurisdiction to award expert witness fees, *see Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2008); If the district court lacks authority to award expert witness fees in an IDEA matter, then, *a foriori*, a hearing officer lacks the authority too award expert witness fees.