

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Fairfield Board of Education v. Student

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

Appearing on behalf of the Student: *Pro se*

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Whether the Board’s functional behavioral assessment of the Student is appropriate.

PROCEDURAL HISTORY:

The Board submitted this request for hearing on June 22, 2009 and a prehearing conference was convened on July 15, 2009. The Board’s requests for extension of the mailing date were granted, and this matter convened on one hearing date on September 8, 2009.

At the conclusion of the hearing, the parties were given an opportunity to present closing arguments or submit briefs. The Parents elected to submit briefs, and a brief filing was scheduled for September 15, 2009. The Board submitted a brief; the Parents did not submit a brief nor did they request an extension of the brief filing date prior to the date briefs were due. The Parents subsequently requested an extension of the brief filing date which was denied.

The Board’s witnesses were Ann Leffert, Board elementary special education coordinator; Solandy Forte, Center for Children with Special Needs behavioral consultant and Mark Palmieri, licensed clinical psychologist with the Center for Children with Special Needs.

The Parents presented no witnesses.¹

¹ The hearing was scheduled to commence at 10 a.m., but the Parent was not present. The Board contacted the Parent, and the Parent arrived at the hearing at approximately 11 a.m. The Father claimed that he had thought the hearing was to commence on October 8, 2009, the mailing date of the decision, although both parties were sent a Notice of Hearing scheduling the September 8, 2009 hearing. In addition, counsel for the Board had sent an email to the Parent the week before the hearing, referencing the September 8, 2009 hearing date and attempting to determine if the Parent continued to request an FBA in light of a unilateral placement of the Student. The Parent responded late on September 7, 2009 that he was proceeding. [Exhibit H.O.-2] Therefore it is concluded that the Parent had notice of this hearing.

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)

SUMMARY:

During the 2008-09 school year, the Board's behavioral consultant completed a functional behavior assessment ("FSA") of the Student. At a PPT meeting at the end of the school year, the Parents requested an independent FBA at Board expense. This request was denied and the Board filed this request for hearing.

FINDINGS OF FACTS:

1. The Student is 9 years old and currently attending a private school as a unilateral placement. [Exhibits B-3, H.O.-2]
2. It is undisputed that the Student is eligible for special education and related services under the primary disability of Autism.
3. During the 2008-09 school year, the Student attended the Board's elementary school where he was in fourth grade. Based on concerns raised at a May 15, 2008 Planning and Placement Team [PPT] meeting, the June 13, 2008 PPT agreed that a functional behavioral assessment [FBA] would be conducted in the fall of 2008 by a Board Certified Behavioral Analyst from the Center for Children with Special Needs. [Testimony Ms. Leffert, Exhibit B-9]
4. An FBA is an assessment to identify the functions of particular targeted behavior, and determine the antecedents and consequences of the behavior. Then, the consultant develops a plan to change that behavior. The FBA is data driven and includes data collection, direct observation and an analysis of ABC [antecedent, behavior and consequence] data. Data is compiled on a continuous basis during the FBA. There is no specific timeline for when an FBA is completed; the assessment is finalized after all assessments and observations are complete and all of the data is thoroughly analyzed. [Testimony Ms. Forte, Dr. Palmieri]
5. The Center for Children with Special Needs behavioral consultant was contacted in late October to conduct the FBA for the Student as was planned in the PPT meeting. The target behaviors for the FBA were noncompliant behaviors including vocal outbursts, throwing items, singing, walking away from the work area and lying on the ground. [Testimony Ms. Forte, Exhibit B-4]
6. The consultant's assessment was comprehensive. By this time, the Board staff had already commenced collecting data, which the consultant reviewed. The consultant met with the Board school psychologist, the special education teacher and the regular education teacher on several occasions. The consultant made requests as to how additional data was to be collected. She administered the Functional Analysis Screening tool (FAST) and the Functional Assessment Interview Tool (FAIT), standardized assessments that were selected based on the Student's presentation. The consultant observed the Student on four separate occasions across multiple

settings. She also administered the Student-Assisted Functional Assessment Interview to him. [Testimony Ms. Forte, Exhibit B-4]

7. After reviewing the data, the consultant hypothesized that the function of the Student's behavior was to escape demands and gain attention from others. [Testimony Ms. Forte]
8. In accordance with her standard practice, the consultant drafted a report consistent with her standard format. [Testimony Ms. Forte, Exhibit B-4] She also drafted a Behavior Support Plan. [Exhibit B-5]
9. Dr. Mark Palmieri, a licensed clinical psychologist and BCBA, is the coordinator of school consultation services for the Center and Ms. Forte's supervisor. He is highly trained and qualified in the area of autism as well as in the area of FBAs. [Testimony Dr. Palmieri, Exhibit B-13] Dr. Palmieri observed the Student prior to the completion of the FBA and reviewed the data. He read the consultant's draft of the FBA and agreed with her conclusions, only making minor grammatical changes to her report. [Testimony Dr. Palmieri]
10. The FBA was sent to the Parents by the Board coordinator and PPT meetings were scheduled to review the FBA. [Testimony Ms. Leffert, Exhibits B-1, B-2, B-3, B-4, B-6]
11. On May 4, 2009, the PPT was convened to review the FBA. The Parents, the school team, Ms. Leffert and Ms. Forte attended the PPT. The PPT lasted approximately two hours, and Ms. Forte spent almost the entire time during the PPT reviewing the FBA in great detail and responding to the Parents' questions. She also reviewed the behavior plan. At no time during this PPT meeting did the Parents state that they were in disagreement with the FBA. [Testimony Ms. Leffert, Ms. Forte; Exhibit B-8]
12. The implementation date for the behavior plan was May 18, 2009. The behavior plan was never implemented, however, because the Parents removed the Student from the school on May 20 for a month long trip to Europe. The Student was returned to school on June 19, and the last day of school was Tuesday, June 23, 2009. [Testimony Ms. Leffert]
13. The annual review was commenced on May 11, 2009 but not completed. While in Europe, the Parent emailed the coordinator that he wanted an independent FBA. [Testimony Ms. Leffert] The Board attempted to reschedule the annual review but needed to wait until the Parents returned from Europe. [Testimony Ms. Leffert, Exhibits B-9, B-10, B-11]
14. The annual review was continued on June 19. At that PPT meeting, the Father stated that he was in disagreement with the FBA, although he did not state the reason for the disagreement, and requested an independent FBA at Board expense. [Testimony Ms. Leffert]
15. The Parents' request was denied, and the Board filed this Request for Hearing.

DISCUSSION/CONCLUSIONS OF LAW:

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

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 parent’s request is not granted.

The sole issue to be determined is whether the Board’s FBA is appropriate.

The FBA conducted by the Center for Children with Special Needs complied with all professional standards and was appropriate. The individual conducting the FBA was well qualified, thoroughly trained, skilled and knowledgeable, with appropriate credentials for completing the assessment. The consultant was supervised in this assessment by Dr. Palmieri who also was very well qualified to supervise the assessment, and did so in an appropriate manner. Dr. Palmieri is a clinical psychologist as well as a Board Certified Behavior Analyst who has published in the field of behavioral assessments. Dr. Palmieri directly observed the Student and reviewed the data. He reviewed the consultant’s report and concurred in her results. Thus, the level of professionalism and quality of the assessment is appropriate.

The FBA used multiple tools and assessments, which further leads to the conclusion that this assessment was appropriate. According to the consultant and Dr. Palmieri, an FBA consists 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 FBA is clearly appropriate in its use of nondiscriminatory assessments tools which included observations. Based

on the expansiveness of this FBA, and the professional manner in which it was completed, there is no additional better information that could be obtained from another FBA.

At the hearing the Parent alluded to the fact that the FBA was not done in a timely manner, which he claimed would result in the FBA being deemed inappropriate. Such an argument is a red herring in this case. The FBA is a systematic and comprehensive evaluation that is not completed under a particular timeline. The assessment was completed over several months and a detailed report and behavior support plan was drafted. The Parents did not allow the Board to have an opportunity to put the program into place, as the Parents decided to remove the Student from school for the last month of the year to go on a family vacation. The testimony presented and evidence submitted support the conclusion that the FBA was done appropriately, comprehensively and based on the facts of this case was done in a timely manner.

FINAL DECISION AND ORDER:

1. The Board's Functional Behavior Assessment of the Student is appropriate.