

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Ledyard Board of Education v. Student

Appearing on behalf of the Parents: Pro Se

Appearing on behalf of the Board: Attorney Frederick L. Dorsey
Kainen, Escalera and McHale, P.C.
21 Oak Street
Hartford, CT 06106

Appearing before: Justino Rosado, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the Board be permitted to have triennial assessments in the area of academics, motor, social, language expressive, receptive, vocabulary, and behavior conducted by the staff at the LEARN Center ABA Program, over the Parents' objection? If not;
2. Should the Parents be allowed to have an independent educational evaluation (IEE) conducted by Dr. Tina Newman?

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 Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

SUMMARY:

The Student has been identified with Autism and is entitled to receive a free and appropriate public education (FAPE) as defined in the Individuals With Disabilities Education Improvement Act (IDEIA) 20 U.S.C. §1401 et seq. and Connecticut General Statutes §10-76a et seq. The Board had not performed a triennial evaluation since 2011 and requested the Parents' consent to conduct triennial evaluations. The Parents refused to consent and requested an IEE by Dr. Tina Newman. The parties attempted to resolve their differences but were not able to do so. The Board filed for due process.

PROCEDURAL HISTORY:

An impartial hearing officer was appointed on March 25, 2014 and a pre-hearing conference was held on April 7, 2014. Hearing dates of May 5 and 20, 2014; June 11 and 24, 2014 and July 22, 2014 were chosen by the parties. The hearing date of June 24, 2014 was cancelled because the

Parents' witnesses were not available. The Board presented Exhibits 1 thru 61 which are full exhibits of the hearing. Parents presented Exhibits 1 through 31 but only Parents' Exhibits¹ 1-14, 16-18, 20, 23-28 and 30-31 are full exhibits of the hearing. Parents' Exhibits 15, 19, 21, 22, and 29 were not accepted as full exhibits of the hearing.

The Student's father requested to participate in the hearing by telephone. This request was denied; the Student's Mother was available and present throughout the hearing. The Board objected to the Parents listing the Board's attorney as a witness. The objection was upheld and the Board's attorney was removed from the Parents' witness list. The Parents presented three witnesses and the Board presented one witness. The Parents' witnesses were subpoenaed for the July 22, 2014 hearing. They all responded to the subpoena.

The Mother's primary language is the Mandarin dialect of the Chinese language. The Mother was assisted, at all hearing days that the hearing was conducted, by an interpreter who spoken the Mandarin dialect of the Chinese language. The first day of hearing, May 5, 2014, the interpreter was not present and the hearing was cancelled.

This Final Decision and Order sets 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 supporting evidence in the record. All evidence presented was considered in deciding this matter. To the extent that 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. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

The date for the mailing of the Final Decision and Order was extended to accommodate the hearing dates. The date for mailing the Final Decision and Order is August 27, 2014.

FINDINGS OF FACT:

1. The Student is diagnosed with Autism and eligible to receive special education and related services as defined in the Individuals with Disabilities Education Improvement Act ("IDEIA") 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. (Board Exhibit² No. 15).
2. At the May 19, 2011 planning and placement team ("PPT") meeting to review the triennial evaluation, the PPT changed the Student's primary disability from Developmentally Delayed to Autism. This change of primary disability was based on the evaluations conducted. The team expressed concerns about the Student's school attendance and behavior. (P-9)
3. On May 17, 2012, the Parents consented to a psycho-educational evaluation and a receptive and expressive language evaluation. (B-11) The evaluations were conducted and reviewed at the December 18, 2012 PPT meeting. Based on the psycho-educational

¹ Hereafter Parents' Exhibits will be noted as "P" followed by the number of the exhibit.

² Hereafter Board's Exhibits will be noted as "B" followed by the number of the exhibit.

- evaluator's recommendations, the PPT team recommended an out of district placement. (B-24)
4. During the 2012-2013 school year, the Student's behavior was becoming a concern and incident reports were written for climbing on furniture, grabbing and hitting at teachers. (Testimony of Director of Special Services (DSS), B-20, B-21)
 5. At the January 10, 2013 PPT, the team discussed the Student's behavior and program. The Student's behavior remained inappropriate during transitions and therapies. The Student's class work was modified and the team was of the opinion that an out of district placement was appropriate. It was recommended that the Student be placed at the LEARN Center ABA Program.(B-27)
 6. On February 14, 2013 and twice on March 5, 2013, incident reports were written regarding the Student kicking the para-professional, trying to break her glasses and kicking and spitting at the teacher. (B-34 and B-35)
 7. On March 22, 2013, a PPT meeting was held to discuss the psycho-educational evaluation agreed upon in May 2012. The team agreed to place the Student at the LEARN Center ABA Program. This placement was based on the Student's escalating behavioral issues and recommendations made in the evaluator's evaluation. The Student's program provided for one hour of occupational therapy per week, one hour of physical therapy per week and two and one half hours of speech and language pathology each week. (B-39)
 8. On May 6, 2013 a functional behavioral assessment (FBA) was conducted of the Student. The Board Certified Behavioral Analyst (BCBA) who conducted the FBA hypothesized that the function of these behaviors is to gain attention from adults.(B-42)
 9. At the end of the 2012-2013 school year, the Student's Annual Review showed that he was having difficulty identifying and expressing feeling and establishing peer relationships. The Student's social worker found that he was eager to make friends but had difficulty initiating and interacting with others. The Student was not able to demonstrate the value of money. He was not able to read a selection and answer questions on what he read nor was he able to spell words at grade level with 60% accuracy. (B-45)
 10. During the 2013-2014 school year, the Student attended the second grade at the Board's elementary school. (B-51)
 11. On October 30, 2013, notice of a PPT was sent to the Parents informing them of the Board's request to perform triennial evaluations of the Student in the areas of academics, occupational and physical therapy, socialization, transitions, repetitive and expressive language vocabulary, communications and an FBA. The evaluations were to be conducted by the staff of the LEARN Center ABA Program. (B-50)
 12. At the October 30, 2013 PPT meeting, the Parents refused to consent to the requested evaluations. The Parents wanted a follow up evaluation by the prior psycho-educational evaluator, Dr. Newman. The Board suggested that they first conduct the Board requested evaluations and the results of the evaluations might help formulate questions for Dr. Newman. The Parents did not agree with the Board's requested evaluations and the Board denied the Parents' request for an IEE. (B-51, Testimony of DSS)
 13. The Student's counselor opined that it was in the best interest of the Student to conduct the triennial evaluations. An evaluation of the Student's social skills would provide his

teachers with the Student's level of independence and guidance for his least restrictive environment. (Testimony of Counselor from the LEARN Center ABA Program)

14. The Student's language teacher from the LEARN Center ABA Program opined that the evaluations are important because his teachers need to know the Student's strengths and weaknesses. (Testimony of Teacher from the LEARN Center ABA Program)
15. The Board Certified Behavioral Analyst (BCBA) testified that the Student seeks attention. The BCBA was of the opinion that an FBA would show whether this attention tendency was a positive or negative strength of the Student. The FBA assessments would be data collection, questionnaires and interviews. The data collection would be of the behaviors' antecedents and where the behavior is going. Data would be collected from classroom teacher and staff. The BCBA would conduct training for intervention specialists to identify the behavior and collect data. The FBA would be utilized to develop a behavioral intervention plan for the Student. (Testimony of BCBA from the LEARN Center ABA Program)

CONCLUSIONS OF LAW and ARGUMENT:

1. It is undisputed that the Student is eligible for special education and related services as set forth in the IDEIA, 20 U.S.C. Sec. 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. Before any action is taken with respect to the initial placement of a child with special needs, a school district must conduct an assessment of the student's educational needs in all areas related to his or her suspected disability. Thereafter, special education students shall be reassessed at least once every three years, unless the parents and the district agree in writing that a reassessment is unnecessary. Reassessment may be conducted more frequently if the school district determines that conditions warrant reassessment, or if a reassessment is requested by the student's teacher or parent. A district may not reassess a student without first obtaining parental consent or an order from a hearing officer allowing the district to reassess the student without parental consent.
3. The Board filed this request for due process in accordance with the provisions of 34 CFR §300.300 (c)(3)(i) and (ii) which provides that if a parent refuses to give consent for a reevaluation, the district may request a due process hearing to show the need for an evaluation. A district can demonstrate the need for an assessment by showing that the student is due for a triennial reevaluation as provided in 34 CFR §300.303(b)(2).
4. The Student's last triennial assessment for special education was conducted in May 2011. (Findings of Fact No. 2) The District is required by law to conduct his next triennial IEP review on May 19, 2014. In preparation for the upcoming May 2014 triennial IEP, the Board sent the Parents, on October 30, 2013, Notice and Consent to Conduct a Reevaluation, in order to conduct the triennial assessment of the Student. Based on the Notice, the Board would reassess the Student in the areas of academic achievement, social skills, transition, receptive and expressive language, vocabulary, communication, occupational and physical therapy and a functional behavioral assessment (FBA). (Findings of Fact No. 11)

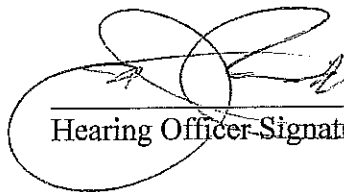
5. In this case, the Board has not done a reevaluation of the Student because the Parents have not provided consent. Because the district had not evaluated the Student in nearly three years, it had a right to reassess the Student's special education needs. *Tustin Unified Sch. Dist.*, 110 LRP 24125 (SEA CA 04/13/10).
6. In this case, not only was the Student due for the reevaluation, but also the Board demonstrated a need to reevaluate him, based on his behavioral difficulties in class, language struggles, difficulties in identifying money and difficulty initiating and interacting with his peers. (Findings of Fact Nos. 8 and 10) The Parents' three witnesses testified that a triennial evaluation was necessary for the Student's program. (Findings of Fact Nos. 13, 14 and 15). The Board can conduct the requested evaluations over the Parents' objection.
7. In this matter, another issue presented is the Parents' request for an IEE at public expense. 34 CFR §300.305(b)(2) provides that, "[I]f a parent requests an independent evaluation at public expense, the public agency must, without unnecessary delay,.. i) [f]ile a due process request to show that its evaluation is appropriate," if the Parents request is not granted.
8. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. 34 CFR §300.502(b)(1). A school district has a right to conduct its own evaluation utilizing the professionals of its own choosing prior to a parent obtaining a second opinion through an independent educational evaluation.
9. In this matter the Parents requested an evaluation by Dr. Newman. The Parents of a child with a disability have the right to obtain an independent educational evaluation of the child. 34 CFR §300.502 (a)(1). A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 CFR §300.502(b)(5). The Board has yet to conduct its own reevaluations of the Student. The Parents need to disagree with an evaluation conducted by the public agency. 34 CFR §300.502(b)(1). The Parents did not present a disagreement with an evaluation conducted by the Board in order to be eligible to request an IEE at public expense. The request to obtain an IEE at public expense is denied.
10. 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 DECISION AND ORDER:

1. The Board is permitted to perform triennial assessments in the areas of academics, motor, social, expressive language, receptive language, vocabulary and behavior conducted by the staff at the LEARN Center ABA Program, over the Parents' objection.
2. The Parents request for an Independent Educational Evaluation at public expense by Dr. Tina Newman is denied.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature

Justino Rosado
Hearing Officer Name in Print