

February 26, 2018

Final Decision and Order 18-0297

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Newtown Board of Education

Appearing on behalf of the Student:

Parent, *pro se*

Appearing on behalf of the Board:

Attorney Julie Fay  
Shipman & Goodwin LLP  
1 Constitution Plaza  
Hartford, CT 06103-1919

Appearing Before:

Attorney Susan Dixon  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

When the Parent disagreed with the District's initial evaluation and was denied a request for an Independent Educational Evaluation (“IEE”) for the Student to be paid for by the District, should the District be required to reimburse the Parent for the cost of the IEE that was subsequently obtained by the Parent?

**PROCEDURAL BACKGROUND:**

The Parent filed this Request for Due Process Hearing on January 29, 2018. The Hearing Officer was assigned on January 31, 2018, and a Prehearing Conference was held on February 6, 2018. The Attorney for the Board appeared at the conference. Despite notice, the Parent did not request an alternate date or call in, and only the Board's attorney attended the conference. On February 6, 2018, the Board filed a Motion to Dismiss on the grounds that the claim is barred by the Statute of Limitations. The Parent submitted a response, dated February 7, 2018, to the Motion to Dismiss which was reviewed and considered by the Hearing Officer in making this decision.

**CONCLUSION:**

Based on the evidence provided, this case must be dismissed. As evidence of the date of the evaluation for which reimbursement is requested, the evaluation itself, and two Planning and Placement Team (“PPT”) memorandums, one dated April 30, 2008 and one dated October 6, 2008 (which refers to the evaluation), were attached as exhibits to the Board's Motion. The Parent provided a written response to the Motion without further documentary evidence. The IEE obtained by the Parent for which reimbursement is now sought was apparently performed in the months between the April and October 2008 PPT meetings. The Parent has not shown that he requested the Board to provide an IEE at the

April PPT meeting or thereafter, at its expense, but took it upon himself to obtain one, unilaterally, shortly thereafter. At the second PPT meeting held in October, 2008, that private IEE was discussed and considered in the PPT meeting summary. The Student was nine years old at the time and is now almost nineteen. Parent is now asking the Board to reimburse him for this 2008 private evaluation. Parent has not offered any reason for his nearly nine (9) year delay in requesting reimbursement. Parent posits that it was actually the Board's duty to request a due process hearing, but cannot demonstrate that he requested an IEE from the Board, which would have triggered that action by the Board.

Part B of the Individuals with Disabilities Education Act, 20 U. S. C. 1400 et seq., and its Regulations thereunder, specifically, 20 U. S. C. § 1415(b)(6)(B); 20 U. S. C. § 1445(f)(3)(C-D); 34 C.F.R. § 300.511(e)-(f), and the Regulations adopted by the State of Connecticut<sup>1</sup>, mandate a two-year Statute of Limitations “to request a hearing from the time the party knows or should have known about the public agency proposal or refusal to initiate or change the identification, evaluation or educational placement of, or the provision of a free appropriate public education to the child. Such two-year limitation shall not apply to a parent who was prevented from filing a request for hearing due to (1) specific misrepresentations made by the public agency indicating that the public agency had resolved the problem forming the basis of the hearing, or (2) the public agency's withholding of information from the parent that was required to be provided to the parent under Part B of the Individuals with Disabilities Education Act, 20 U. S. C. § 1400 et seq. and the regulations adopted thereunder, as amended from time to time.” RCSA 10-76h-4(a)

In his response, the Parent fails to identify any specific misrepresentation made by the Board that the problem had been resolved, and fails to identify any required information that was withheld. Indeed, the Parent agreed with the April 2008 PPT decisions, and was not requesting further action, be it an evaluation, changes to the IEP, or other services. The Parent admitted then that the Student was seeing an outside counselor. There is no evidence Parent requested the Board provide an IEE, before taking that task upon himself. That step is a necessary predicate to further action. At that point, the Board would have had to act, and file for a due process hearing, but, conversely, the Board does not have to act unless there is a request filed. It is not disputed that the October, 2008 PPT memorandum specifically included reference to the recently-completed evaluation in question and duly considered it in making the recommendations. It further states that the procedural safeguards were given to the Parent. Even if the providing of the private IEE to the Board were to possibly be construed as an implicit request for reimbursement, the time limit would have begun to run from October, 2008. It is clear that the Parent was on notice, at least from the date of the October PPT meeting, that the PPT team had taken the Parent's private evaluation into consideration in formulating its Individualized Education Program (“IEP”). At that time, the Parent knew, or should have known enough information to request reimbursement at that time or within two (2) years thereafter.

#### **FINAL DECISION AND ORDER:**

The Board's Motion to Dismiss is GRANTED and the case is DISMISSED.

---

<sup>1</sup> RCSA §10-76h-4(a)