

March 9, 2020

Case No. 20-0314

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Greenwich Board of Education v. Student

Appearing on behalf of the Parents:

Parents, *pro se*

Appearing on behalf of the Board:

Attorney Abby Wadler
Assistant Town Attorney
Greenwich Town Hall – Law Dept.
101 Field Point Road
Greenwich, CT 06830

Appearing before:

Attorney Susan Dixon
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Whether the Greenwich Board of Education's Multidisciplinary Educational Evaluation is appropriate or, if not, are the Parents entitled to an independent evaluation to be ordered at public expense, as the Parent has requested?

PROCEDURAL HISTORY:

The Due Process Hearing Request in this case was initiated by the Greenwich Board of Education (“Board”) on January 22, 2020 to determine the single issue above. This Impartial Hearing Officer was assigned to the case on January 24, 2020.

At the pre-hearing conference convened on January 29, 2020, the Student's parents (“the Parents”) appeared on behalf of the Student and Attorney Abby Wadler appeared on behalf of the Board of Education. At the conference, the hearing date was scheduled for February 25, 2020, and the deadline for filing the final decision in this case was established to be March 9, 2020.

The hearing convened on February 25, 2020, and concluded on that date.

The hearing was attended by both Parents, who were self-represented, and Mary Forde, Chief Pupil Personnel Services Officer for Greenwich Public Schools, represented by Attorney Wadler.

The following witnesses testified:

Kathleen Smith-Ramirez, M.Ed., Assistant Principal, North Street School
Loren Castro, M.A., Educational Evaluator, Greenwich Public Schools
Lisa Strizver, M.A., C.A.S. School Psychologist, Greenwich Public Schools
Julie Webster, M.A. CCC-SLP Speech and Language Pathologist, Greenwich Public Schools

Hearing Officer Exhibit HO-1 was entered as a full exhibit.
Board Exhibits B-1 through B-18 were entered as full exhibits.
Parents did not testify or present 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. *Bonnie Ann F. v. Calallen Independent School Board*, 835 F. Supp. 340 (S. D. Tex., 1993)

SUMMARY:

The 10-year old Student currently attends North Street School in the Greenwich School District (the "District"). The Parents requested that the Student be tested due to their concerns about her performance in the area of math, and the District responded to their request. An Initial Multidisciplinary Evaluation was performed using a battery of standardized tests, review of school records and interviews with Student, Parent and Teachers. While Student was not found to be eligible to receive Special Education services, the evaluators concluded she would benefit from a "504 Plan." 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. After hearing, the Hearing Officer found the evaluation to be appropriate and sufficient and that the Parents were 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 ten years of age (DOB 1/14/10) and is enrolled in the 4th Grade at the North Street School.
2. Student has not ever previously been identified as eligible for Special Education according to

the records provided.

3. The Student is described by all of the witnesses as a good student, who is not a disciplinary problem, and who is currently working at grade level. (T. Smith-Ramirez)
4. In mid-October, 2019, the Parents contacted the District and requested an evaluation of Student due to their concerns about Student's distractibility, her math and reading skills, and whether she is in fact able to perform at grade level. (B-4)
5. A Planning and Placement Team ("PPT") was convened and met on October 19, 2019 to address Parent concerns. (B-7)
6. The PPT personnel concluded that the Student should be evaluated by a multidisciplinary team to determine if the Student is eligible for Special Education Services. (B-7)
7. The Parents requested that the evaluation also address the issues of impulse control and social emotional behaviors. (B-6)
8. Written Notice of Procedural Safeguards and Consent for Testing were given to Parents on or about October 25, 2019. (B-14)
9. On or about October 28, 2019 the Parents gave their consent for the evaluation. (B-6, B-14)
10. The Parents declined to provide the Team with the background or developmental history of the Student. (B-5, B-8)
11. The Student was assessed by a Multidisciplinary Team (the "Team") consisting of the school psychologist, the educational evaluator and the speech and language pathologist. (B-8)
12. The Team included the School Psychologist, Lisa Strizver, who has a Master's Degree in School Psychology and has been conducting evaluations since 2009 in the Greenwich School District. (B-16)
13. The Speech and Language ("SLP") Pathologist for the District, Julie Webster, who has an advanced degree in Speech-Language Pathology and has been providing SLP services and evaluations for the District since 2006, conducted that portion of the evaluation. (B-18)
14. Ms. Loren Castro, who served as the Educational Evaluator for the Team, was a former Special Education teacher with a Master's degree from New York University ("NYU") in Early Childhood Elementary Education and 6th Year Certificate in Mid-Moderate Disabilities, Special Education from NYU. (B-17)
15. All of the Team members testified they had done "hundreds" of evaluations over the years of their relationship with the Greenwich School District. T. Strizver, T. Castro, T. Webster
16. The Multidisciplinary Evaluation was performed over several weeks, commencing on November 14, 2019 and concluding on December 5, 2019. (B-8)
17. A written report of the evaluation was produced, providing detailed results and analysis of the testing performed. (B-8)
18. During the course of the evaluation, members of the Team performed an extensive battery of tests on the Student in her native language of English, including:
 - a. Weschler Intelligence Scale for Children - V (WISC-V)
 - b. Wide Range Assessment of Memory and Learning – 2nd Ed. (WRAML-2)
 - c. Conners Behavior Rating Scale - 3rd Ed. (CBRS-III)
(Parent and Teacher Rating Scales)
 - d. Kaufman Test of Educational Achievement – III (KTEA-3)
 - e. Gray Oral Reading Tests -V (GORT-5)
 - f. Comprehensive Test of Phonological Processing (CTOPP2) Ages 7-24
 - g. Test of Word Reading Efficiency - 2nd Ed. (TOWRE-2) Form A
 - h. Clinical Evaluation of Language Fundamentals -5 (CELF 5)
 - i. Test of Problem Solving – Third Edition: Normative Update (TOPS-3E:NU)
 - j. Test of Pragmatic Language – Second Edition (TOPL-2) (All above: B-8)
19. Additionally, as components of the evaluation, the Student's academic records were reviewed

- and the Student was observed in her classroom on November 25, 2019. (B-8)
20. The test results and completed evaluation were reviewed and discussed with Parents at a PPT meeting on December 19, 2019. (B-6)
 21. The testing was reviewed by the Team members (and by Assistant Principal Kathleen Smith-Ramirez) who also reviewed the Student's performance on report cards, records and standard tests required by the State of Connecticut for assessment of all students such as Smarter Balanced and Connecticut Mastery Tests. (T. Smith-Ramirez, T. Castro)
 22. Ms. Smith-Ramirez testified that the tests reflected that the Student was within benchmarks and working at grade level. (T. Smith-Ramirez)
 23. Student's most recent Report Card demonstrates that she is performing "consistently" at grade level. (B-10)
 24. Student's 2019 Smarter Balanced scores were at Level 4 ("Exceeds Standard") or Level 3 ("Meets Standards") (B-12)
 25. Student's scores on the Cognitive Abilities Test ("CogAT") place her in the "above average" range (B-13)
 26. The team reported the results of the WISC-V placed the Student within the "average" range of cognitive ability but "high average" in the area of Verbal Comprehension. (B-8, T. Castro)
 27. In the WRAML-2, Student did score a Low Average in the area of Verbal Memory, but in all other areas (Visual Memory, Attention/Concentration) she did much better and scored in the Average range. (B-8)
 28. Although a few of the Student's scores in the CTOPP-2 (in the areas of phonetic decoding and long-term storage and retrieval) were in the low average, the majority of scores in her GORT-5, KTEA-3 tests of her short-term memory, processing speed and math ability were average, above average, or superior. (B-8)
 29. Student's Connors-3 (CBRS-III) scores revealed concerns in the areas of inattention and executive functioning and indicated Student demonstrates behaviors typically associated with Attention Deficit Hyperactivity Disorder ("ADHD"). (B-8)
 30. The KTEA-3 and GORT-5 tests did not reveal significant concerns about the Student's academic progress or ability to learn. (B-8, T. Castro)
 31. All of the tests in the Speech and Language evaluation (CELF-5, TOPS-3E:NU, TOPL-2) rated Student in the Average to Above Average range¹. (B-8, T. Webster)
 32. Ms. Castro testified she and Ms. Strizver both observed Student in the classroom and provided detailed reports of her classroom work and behavior for the evaluation. (B-8, T. Castro)
 33. The Student speaks English as her first language and was wearing her glasses during all phases of the testing. There was no claim that the Student was unable to adequately perform the tests to the best of her ability on the testing dates. (T. Castro)
 34. There was no claim or evidence presented to suggest any racial or cultural discrimination in the testing process. (T. Castro)
 35. The Team's testing results and evaluation were discussed with the Parents and PPT members at the PPT meeting on December 19, 2019. (B-4)
 36. The Student was not found eligible for Special Education Services as a result of the evaluation, but it was found that she exhibited certain signs of ADHD. (B-4, B-8)
 37. Ms. Smith-Ramirez testified that she reviewed the Guidelines for Identifying Students with ADHD with the Parents, and the Student met the criteria for ADHD-Combined Type. (B-4, B-8)
 38. The Parents disagreed with some of the conclusions and interpretations of the testing. (B-4)
 39. The Team concluded that the Student has an educational diagnosis of ADHD and that she would

¹ A typographical error was discovered and the report was amended to reflect the "37th percentile" rather than the "9th percentile."

therefore be eligible for a Section 504 Accommodation Plan to assist her. (B-8)

40. The Team's evaluation described the Student's many strengths; vocabulary, verbal comprehension, above average academic performance and social/pragmatic skills; but noted some areas to be addressed, such as inattentive behavior, task completion and distractibility. (B-8)

41. The recommendations of the Team were to implement a behavioral support plan focused on improving her independent work skills. (B-8)

42. The Parents requested an IEE on December 19, 2019, which was denied by the Team.

(B-3, B-4)

43. The Board notified the Parents that it denied their request for an IEE. (B-3, B-4)

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), 10-76h-3, 10-76h-4.

An evaluation of a student by a school district must include a variety of assessment tools and strategies to gather relevant functional developmental and academic information about the child, including information provided by the parent. The tools used must be non-discriminatory on a racial or cultural basis and be administered in a language or form most likely to yield accurate information on what the child knows and can do academically developmentally and functionally and be geared to provide relevant information to assist in determining the educational needs of the child, 20 U.S.C. 1414 (a)(2), (3)(i-ii), 34 C. F. R. 304, R.C.S.A. 10-76d-9(a)

The Parents did not question the qualifications or the certifications of the Team members. The Parents did not request alternative testing and accepted the tests chosen by the Team. The Parents did, however, question the test scores and whether the Student should be achieving higher scores. According to the testimony of Ms. Smith-Ramirez, if the benchmarks are being met by the Student, that satisfies the purpose of this type of evaluation which is to determine if there is a disability that is having an effect on the Student's educational capability. It is axiomatic that the Parents are always free to investigate and secure any additional testing or educational enhancement they desire for their child at their expense above and beyond that provided by the Board.

Parents informed the Board on or about December 19, 2019 that they disagreed with the Board's evaluation and the Board thereupon timely filed this Due Process Request to determine whether its evaluation was appropriate and meets the stated purpose of 34 C.F.R. §300.301-300.305.

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)

In this case the Board filed a Request for Impartial Special Education Hearing on January 23, 2020. This Request was as a result of the Parents' stated disagreement with the evaluation completed by the District. No procedural violations were raised at the hearing or noted in the record.

A hearing was properly initiated and scheduled according to the Regulations, at which it is found by a preponderance of evidence that the Board's evaluation meets the stated purpose of 34 C.F.R. §300.301-300.305, 300.502, R. C. S. A. 10-76d-9(a), 10-76h-3, 10-76h-4. The Parents did not call any witnesses at the hearing, or offer evidence to support their 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. §10-76d-9(a) and (b).

The evaluators were trained and experienced school personnel including a school psychologist, speech and language pathologist, and an educational evaluator, each of whom were each familiar with the student, and familiar with necessary tests used in evaluations.

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 Board's evaluation met the standard of appropriateness, in that: 1) the evaluators were qualified to conduct an evaluation of the Student; 2) the evaluators administered a comprehensive battery of essential tests to the Student under standard conditions; 3) reviewed the records comprising the Student's educational background, in addition to interviewing the Student, the Student's parent and teachers; 4) did not discriminate against Student on a racial or cultural basis; and 4) used the information to make recommendations as to the Student's performance and plan of instruction. 34 C.F.R. 300.502, R.C.S.A. 10-76d-9(a)

FINAL DECISION AND ORDER:

1. The Board's Multidisciplinary Evaluation dated December 19, 2019 is appropriate.
2. Parents are not entitled to an Independent Educational Evaluation at public expense.