

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Watertown Board of Education v. Student¹

Appearing on behalf of Student: Student's Mother, *Pro Se*

Appearing on behalf of the Board of Education: Attorney Julie Wilde
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919

Appearing before: Janis C. Jerman
Hearing Officer

FINAL DECISION AND ORDER

A special education hearing in the above-captioned matter was requested by the Board of Education's (BOE's) Attorney via letter dated November 6, 2020.² Student's Mother received the request for hearing on November 10. The 45-day deadline to mail the final decision and order is December 24.

A telephonic pre-hearing conference was held on November 24. Attorney Wilde appeared on behalf of BOE; no one appeared on behalf of Student. A reminder email was sent to Student's Mother asking her to join the conference call. The Hearing Officer waited ten minutes for her to join before beginning the prehearing conference in the absence of Student's Mother.

The following issues are identified:³

1. Was the Board of Education's 2020 reading evaluation of Student appropriate?
2. If the answer to Issue One above is in the negative, is Student entitled to an Independent Educational Evaluation in reading at the Board of Education's expense?

Hearings were scheduled for December 16 and 18 via videoconference. Hearing was convened on December 16. The following individuals testified: Student's Special Education Teacher, BOE's Supervisor of Special Education, Student's Mother, and Registered Behavior

¹ To comply with the confidentiality requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and related regulations at 34 CFR § 99, this decision uses "Student," "Parents," and titles of certain school staff members and witnesses in place of names and other personally-identifiable information.

² All dates are 2020 unless otherwise indicated.

³ At the prehearing conference, Issue One was identified as "Were the Board of Education's 2020 evaluations of Student appropriate?" On November 30, BOE's Attorney sought clarification that Student's Mother requested an Independent Educational Evaluation in reading and that the request for due process was limited to that issue. Issue One was amended to refer to the reading evaluation.

Technician. Student's Mother requested to have a second Special Education Teacher testify. BOE's objection to having her testify was sustained on the basis that she did not work for BOE at the time of the evaluation and was not involved in the evaluation.

BOE offered 19 exhibits. Exhibit B13 was not admitted as a full exhibit because BOE submitted the wrong document and the parties stipulated that there was no dispute as to whether Student's Mother consented to the evaluation. Student's Mother offered 7 exhibits. Exhibits S1, S2, S3, S4, S5, and S6 were not admitted as full exhibits because they were not relevant to the evaluation. Exhibit S7 was marked as a full exhibit. BOE's Request for Due Process is marked as Hearing Officer Exhibit 1.

At the conclusion of the hearing, a request for extension of the mailing date was granted on the record to allow for a full review of evidence and drafting a timely decision. The deadline to mail the final decision and order was extended 7 days to December 31, 2020.

Findings of Relevant Fact⁴

1. During the 2019-20 school year, Student was in sixth grade at BOE's Middle School. At all times relevant to this hearing, Student was eligible for special education and related services under the primary disability of autism. Student's secondary disability is ADHD. (Exh. B8, B11, B15; Testimony of Special Education Teacher, Student's Mother)
2. Special Education Supervisor has worked in education for 22 years; 20 of those years in special education. She has served in her current role as supervisor for 5 years. She is responsible for hiring, evaluating, and training BOE's special education staff. She is familiar with Student and worked with his PPT and helped design his programming since 2016. (Exh. B1; Testimony of Special Education Supervisor).
3. BOE provides training to special education staff on obligations under the Individuals with Disabilities Education Act ("IDEA"), all components of special education including individualized education programs ("IEPs"), completing paperwork appropriately, ensuring use of current assessment tools, and training on new assessments introduced to the district. (Testimony of Special Education Supervisor)
4. Special Education Teacher holds a Masters in Elementary Education and a cross-endorsement in Special Education from the Advanced Alternate Route to Certification

⁴ In the Discussion, Findings of Fact are cited as "FOF-#."

program. She holds Connecticut certifications in Elementary Education and Special Education. Special Education Teacher worked as a paraprofessional and then as a long-term substitute teacher prior to obtaining her position as a Certified Special Education Teacher in 2015. (Exh. B2; Testimony of Special Education Teacher)

5. Special Education Teacher was formally trained on different testing measures and completed practice evaluations. She has conducted 25-30 formal tests on students over the years. (Testimony of Special Education Supervisor, Special Education Teacher)
6. Special Education Teacher was Student's Case Manager during the 2019-20 school year and 2020 extended school year ("ESY"). (Exh. B8; Testimony of Special Education Teacher). A Planning and Placement Team ("PPT") meeting was held on October 24, 2019, to conduct Student's annual review and plan for his triennial re-evaluation. Student's Mother participated in the meeting. The purpose of triennial re-evaluation is to get updated information on Student's achievements and to determine his continued eligibility for special education. (Exh. B8; Testimony of Special Education Teacher, Student's Mother)
7. Special Education Teacher recommended academic achievement testing to get a "firmer look" at Student's achievement levels. Student's past testing did not include formal academic achievement assessments because he was not at a level to be able to get an accurate measure in the past. Special Education Teacher felt that Student was at a point that, with proper supports and accommodations, he could make it through the assessments in short sessions. (Exh. B8; Testimony of Special Education Teacher)
8. Student's multidisciplinary triennial evaluation consisted of academic achievement testing, speech and language evaluation, psychoeducational evaluation, and occupational therapy evaluation. (Exh. B9, B10, B11, B12, B14; Testimony of Special Education Teacher)
9. As part of the academic achievement evaluation, Special Education Teacher reviewed Student's educational records and prior evaluations and assessments prior to administering the Woodcock-Johnson IV Test of Achievement Form B ("WJ-IV") and the Gray Oral Reading Test 5th Edition ("GORT-5") to Student. Special Education Teacher is qualified to administer the evaluations and has the correct endorsements to conduct academic achievement assessments, including the WJ-IV and GORT-5 (Exh. B10, B11; Testimony of Special Education Teacher, Special Education Supervisor)

10. The WJ-IV is a common comprehensive instrument that measures reading, writing, comprehension, fluency, and math. Special Education Teacher has been trained on and has used the WJ-IV before and is familiar with the manufacturer's protocols and rules for administering it. She followed the manufacturer's protocols and instrument's teacher manual when administering the tests to Student. She also used various strategies and accommodations to ensure validity of the results. (Exh. B10, B11; Testimony of Special Education Teacher)
11. The GORT-5 focuses more on vocabulary fluency and comprehension. It is appropriate for children with Student's intellectual disability. It is a standard assessment that tests down to the pre-K level. Special Education Teacher has been trained on and has used the GORT-5 before and is familiar with the manufacturer's protocols and rules for administering it. She followed the manufacturer's protocols when administering it to Student. (Exh. B11; Testimony of Special Education Teacher)
12. Special Education Teacher conducted the evaluation on two days in December 2019 and on 6-7 days in January 2020. Special Education Teacher conducted the evaluation in a room within the Life Skills suite. (Exh. B10, B11; Testimony of Special Education Teacher)
13. Registered Behavior Technician, a subcontractor to BOE, was Student's one-to-one aide in fourth, fifth and part of sixth grade. Registered Behavior Technician is not a certified position and is not responsible for academic achievement testing. (Testimony of Special Education Supervisor, Registered Behavior Technician).⁵
14. Student and Registered Behavior Technician were in the Life Skills suite when Special Education Teacher arrived for the December evaluation sessions. Registered Behavior Technician made sure that Student was seated and ready to attend to the evaluation. She would then leave the room and stand outside in case Student needed support. Registered Behavior Technician was not present in the room during any reading evaluations. (Testimony of Special Education Teacher, Special Education Supervisor, Registered Behavior Technician).
15. Special Education Teacher conducted short sessions and administered one or a few subtests at a time over a period of 2-3 weeks. Most test sessions were 15-20 minutes; the longest testing session was 25-30 minutes. She selected testing times based on when Student was

⁵ Registered Behavior Technician testified via telephone.

more regulated and receptive to testing. Special Education Teacher provided accommodations consistent with Student's Behavior Intervention Plan ("BIP") and needs to ensure he was able to attend to the testing sessions. She provided prompts to keep his attention on the task and provided verbal redirection on the non-timed tests. The accommodations were intended to "optimize implementation of testing according to protocols." (Testimony of Special Education Teacher)

16. One week before the December 2019 holiday break, Registered Behavior Technician gave notice that she would not be continuing as a subcontractor. BOE contracted with a new subcontractor beginning in January 2020. Registered Behavior Technician helped transition Student to the new agency in early January 2020. She stopped working with Student on January 4, 2020. BOE felt that Student's transition to the new Behavioral Technician Team went better than they expected. (Testimony of Special Education Teacher, Registered Behavior Technician, Special Education Supervisor).
17. Special Education Teacher did not conduct any evaluations of Student during the transition period to the new Behavioral Technician Team to allow him time to acclimate to the new people working with him. (Testimony of Special Education Teacher)
18. Student's Mother was concerned about Student's behavior during the transition to the new Behavioral Technician Team because he refused to go to some of his specials programs which he loved. She went to school to observe Student in early to mid-January and to meet the new Behavioral Technician Team. She did not observe any evaluation sessions. (Testimony of Student's Mother)
19. On the date of Student's Mother's visit, Student's behavior was dysregulated and "heightened." His in-school behavior is not always consistent on that level. Some days he is very regulated, controllable, and responsive; on other days his behavior is very dysregulated. (Testimony of Special Education Teacher)
20. Student required some redirection and support with the new Behavioral Technician Team. Special Education Teacher worked in small units to not push Student to fatigue and to get as much from him in "prime time" to test his ability and not negatively affect accuracy or his ability to participate in the testing. She observed Student's behavior during the testing to be able to determine the validity of the testing sessions. (Testimony of Special Education Teacher)

21. Special Education Teacher often works with students who need behavioral supports to get through testing. She has worked with and tested students with ADHD, autism, and behavioral needs during her tenure. (Testimony of Special Education Teacher)
22. Student's results on the WJ-IV accurately reflect Student's abilities and are an accurate picture of where he was at that time with reading skills. Student's strengths are in word attack – decoding words, including ones that he does not know the meaning of. His weaknesses are in oral reading and sentence reading which are timed tests. His attention span issues impact these timed scores. Applied problems is a low area due to Student's disability. Student's scoring on the WJ-IV ranged from upper kindergarten to upper 3rd grade. It tests a broad range of skills. (Exh. B10, B11; Testimony of Special Education Teacher)
23. Student's results on the GORT-5 accurately reflect Student's abilities and are an accurate picture of where he was at that time with reading skills. The scoring range on the GORT-5 puts Student solidly on the 1st grade reading level due to its narrow scope. (Testimony of Special Education Teacher)
24. The PPT, including Student's Mother, met on February 13, 2020 to review the triennial testing results from all service providers. Student's Mother asked clarifying questions about the evaluation reports and stated that the evaluation was proof that Student's reading skills are very low. (Exh. B15; Testimony of Special Education Teacher, Student's Mother).
25. The PPT, including Student's Mother, met on October 23, 2020 to conduct Student's Annual Review. Student's Mother expressed concerns about Student's gaps in reading skills. Student's Mother requested an IEE specific to reading. BOE refused the request for IEE and filed for a due process hearing on November 6, 2020 to prove the appropriateness of their evaluation. (Exh. HO1, B17; Testimony of Special Education Supervisor, Student's Mother)

Conclusions of Law

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with the board of education's evaluation. Individuals with Disabilities Education Act ("IDEA"), 20 USC § 1415(b); 34 Code of Federal Regulations ("CFR") 300.502(b)(1); Connecticut State Regulations ("ConnRegs") § 10-76d-9.
2. If a parent requests an independent educational evaluation at public expense, the board of education must, without unnecessary delay, either file a due process complaint to request a

hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense. 34 CFR § 300.502(b)(2); ConnRegs § 10-76d-9.

3. In conducting the evaluation, the board of education must:
 - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent;
 - b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 CFR § 300.304(b).

4. Each board of education must ensure that:
 - a. Assessments and other evaluation materials used to assess a child under this part (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer; (iii) are used for the purposes for which the assessments or measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with any instructions provided by the producer of the assessments.
 - b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
 - c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting

the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

- d. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- e. In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- f. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

34 CFR § 300.304(c).

- 5. BOE has the burden of proving the appropriateness of its evaluation by a preponderance of the evidence. ConnRegs § 10-76h-14.
- 6. If the board of education requests a due process hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. 34 CFR § 300.502(b)(3); ConnRegs § 10-76d-9.

Discussion

Each of the issues identified in this case is addressed in this Discussion section. All the parties' arguments and evidence have been reviewed and considered by the Hearing Officer.

BOE's Position

In response to Student's Mother's request for an IEE for reading, BOE refused the request and filed for a due process hearing in accordance with law. The reading evaluation was one component of Student's triennial evaluation. In determining whether BOE's reading evaluation was appropriate, review is limited to examination of the evaluation itself.

The reading evaluation is appropriate in that it was designed to evaluate all suspected areas of concern, was conducted by a certified teacher who administered standardized assessments and conducted observations. Appropriate accommodations were provided, and the testing done in a manner to achieve maximum participation and attention from Student given his

disabilities. The evaluator has experience testing students with similar disabilities. The comprehensive evaluation was reviewed by the PPT in February 2020. All proper procedures were followed.

Student's Mother's Position

Student's Mother requested an IEE at Student's annual review in October 2019. She specifically asked for it in reading because she had concerns for 2-3 years about Student's reading ability and lack of progress in reading.

She believes that her requests on behalf of Student are swiftly denied by a supervisor who has contempt for her simply because she made the request, not based on Student's needs. Student's Mother is concerned that Student's needs are "not part of the equation" and believes that her advocacy for Student should not adversely affect Student.

During a 2018 evaluation, a private speech language pathologist (SLP) observed Student in many segments of his day and observed some reading. The SLP saw Student's struggles in reading.

Student's Mother asked BOE to address Student's reading because he was not progressing the way he should. Student needs something individualized and more appropriate for him. She has requested some kind of reading intervention and thought it was a reasonable request. Student's Mother has done everything she can to advocate for Student. She has taken every measure to avoid asking for an IEE. She requested an IEE to get Student different reading services.

During the summer, BOE gave Student's Mother a reading program to carry out with Student at home. She was not able to do it due to Student's high distractibility, autism, and lack of support due to the school closure. Student's Mother looked at Student's triennial scores, SLP's evaluation, and her own experience with him. She observed the same things that SLP observed – that reading is a struggle. Student's skills in reading are extremely low.

Student's Mother requested an IEE in reading because BOE has not provided adequate data regarding Student's reading over the years and because she believes that Student's behavior during the transition to a new Behavior Team impacted the evaluation. Student's Mother acknowledges that Student's behavior because of his autism and ADHD would also impact an

IEE. An IEE is warranted at this time to get a new set of eyes to see what is appropriate for Student.

Student's Mother asks that Special Education Teacher's testimony be found not credible.

I. Was the Board of Education's 2020 reading evaluation of Student appropriate?

The 2020 reading evaluation was one part of Student's multidisciplinary triennial evaluation (FOF 8).

BOE used a variety of assessment tools and strategies tailored to gather relevant information from record review and standardized assessments. (FOF 7-11). The evaluation was tailored and not limited to a single assessment as the sole criterion (FOF 7-12, 15, 17, 20). BOE used technically sound instruments to assess Student's reading skills (FOF 7, 9-11).

The selected assessments were administered in a form most likely to yield accurate information on what Student knows and his aptitude and achievement levels as opposed to reflecting any sensory impairment (FOF 7, 10, 11, 12, 14-15, 17, 20-21). They were used for the purposes for which the assessments are valid and reliable by trained and knowledgeable personnel in accordance with producer instructions (FOF 3-7, 9, 10-11, 15, 17, 20-23).

Student was assessed in all areas related to suspected disability and the evaluation was sufficiently comprehensive to assist the PPT in determining Student's educational needs (FOF 6-12, 14-15, 17, 20, 22-23, 24).

Student's Mother did not express disagreement with the reading evaluation at the time that the PPT reviewed it in February 2020. (FOF 24-25). She requested an IEE in response to concerns about Student's reading skills over the previous 2-3 years and lack of data provided by BOE. BOE timely filed a request for due process to defend the evaluation (FOF 25).

Witness testimony as cited in the Findings of Fact is found to be credible. The credible evidence, both testimony and documentary, supports a finding that BOE's 2020 reading evaluation of Student was appropriate and in compliance with 34 CFR § 300.304.

II. If the answer to Issue One above is in the negative, is Student entitled to an Independent Educational Evaluation in reading at BOE's expense?

The answer to Issue One is not in the negative so Student is not entitled to an Independent Educational Evaluation in reading at public expense.

FINAL DECISION AND ORDER

1. The Board of Education's 2020 reading evaluation of Student was appropriate.
2. Based on the determination as to Issue One, Student is not entitled to an Independent Educational Evaluation at public expense.