

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Wallingford Board of Education v. Student

Appearing on Behalf of the Parents: Pro Se

Appearing on Behalf of the Board: Attorney Frederick L. Dorsey  
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50 Trumbull Avenue  
Hartford, CT 06103

Appearing Before: Attorney Justino Rosado, Hearing Officer

**ISSUE:**

Should the Board be permitted to conduct a psychiatric evaluation, functional behavioral assessment (FBA), behavior rating scales and adaptive behavior scale of the Student without the Parent's consent?

**FINAL DECISION AND ORDER**

**SUMMARY:**

The Student has been as identified as Speech or Language Impaired and is entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At a PPT meeting, the Board requested permission from the Parent to conduct a psychiatric evaluation, functional behavioral assessment, behavior rating scales and adaptive behavior scale of the Student. The Parent refused the Board's request. The Board filed for due process.

**PROCEDURAL HISTORY:**

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

On May 20, 2011, the Board filed for due process. An impartial hearing officer was appointed on May 23, 2011 and a pre-hearing conference was held on June 6, 2011. A hearing date of July 21, 2011 was chosen by the parties. The Board objected to Parent's Exhibits 3 and 5 being made full exhibits of the hearing. The objection to Parent's Exhibits 3 and 5 was that they were letters from a doctor who was not going to testify. The objections were sustained.

Five days after the conclusion of the evidentiary portion of the hearing, the Parent requested that the hearing be reopened. The grounds for this request was that they had obtained new evidence that would prove one of their witnesses lied. The Board filed a timely objection. The hearing was not reopened.

In order to accommodate the mailing of the Final Decision and Order after the hearing date, the mailing of the Final Decision and Order was extended by the parties. The date for mailing the Final Decision and Order is September 2, 2011.

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 supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the Summary and Proposed Findings of Fact actually represent conclusions of law, they should be so considered by the Hearing Officer and vice versa, SAS Institute, Inc. v. S&H Computer Systems, Inc., 605 F. Supp. 816 (M.D. Tenn. 1985); Bonnie Ann F. v. Callallen Ind. Sch. Bd., 835 F. Supp. 340 (S.D. Tex. 1993).

#### **FINDINGS OF FACT:**

1. The Student has been identified as Speech or Language Impaired and is entitled to receive a FAPE as defined in the IDEA. (Testimony of Coordinator of Special Education (CSE), Board Exhibit<sup>1</sup>-5)
2. In 2003 an FBA was conducted of the Student. Target behaviors of touching, calling out for attention, being stubborn and getting out of the seat were observed. The purpose of the target behaviors was to seek attention. The Student was expected to follow instructions and proper social skills were to be taught to the Student. (B-5)
3. On or about May 2003, the Student was found to be eligible for special education and related services under the classification of Other Health Impaired, Attention Deficit Hyperactive Disorder. In the re-evaluation performed, it was found that the Student, in comparison to his peers, demonstrated inconsistent attention and concentration in his tasks. During testing the Student appeared inactive and demonstrated inappropriate behaviors. The Student's test sessions had to be shortened because his behaviors were impacting his performance. The Student was licking his hands, played and flipped dice, and was constantly out of his seat. (B-6, B-7)
4. At the June 14, 2006 PPT, the Student's primary disability was changed from OHI to Speech or Language Impairment. The Student's behavior improved when he was prompted. The Student still demonstrated impulsivity. (B-10)

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<sup>1</sup> Exhibits from the Student's home district will be referenced with a "B" followed by the exhibit number. Parent's Exhibits will be designated in this decision with a "P" followed by the exhibit number.

5. At the April 2, 2009 PPT meeting, the Parent requested that the Student be removed from special education services and his IEP be "frozen." The Board requested that they be allowed to conduct a reevaluation of the Student. The Parent refused the Board's request. The Parent sent a letter to the Board revoking all special education for the Student. At a later date the Parent withdrew the revocation. (B-12, B-13)
6. By May 2009 of the 2009-2010 school year, the Student had been absent 4 days and had received 35 disciplinary infractions. These infractions included insubordination, fighting, profanity and class problems. By May 2009, the Student's grades were as follows: Language Arts "D", Math "F", Science "F" and Social Studies "D". (B-16, B-26)
7. In May 2010, the Board conducted a psychoeducational assessment of the Student. The instruments used to assess the Student were a review of the Student's record, classroom observation and the Wechsler Intelligence Scale for Children (WISC-IV). Overall, the Student was off task 30% of the time he was observed. The WISC-IV showed that the Student had a Full Scale IQ of 60. This placed the Student in the extremely low range for children of his age. In Verbal Comprehension the Student scored 73, which placed him in the 4th percentile of children his age. In Perceptual Reasoning, the Student's score of 77 placed him in the 6th percentile in the area of abstract reasoning abilities and visual information processing. (B-16)
8. In May 2010 the special education teacher conducted an academic assessment of the Student. The test was untimed. The Student scored below average in all subsets that measuring reading, written language and oral language. The Student showed a relative strength in mathematics. Areas involving recall of information and short term memory were of particular concern. (B-17).
9. In February 2011, the PPT met to discuss CMT accommodations for the Student. At the PPT, the Parent was of the opinion that the Student's IQ was not accurate and the evaluations conducted did not capture "a true picture of the [Student]." The team recommended a neuro-psychological evaluation. The Parent would consider the evaluation if it were done by an independent evaluator. The Parent did not sign the releases to evaluate the Student. (B-20).
10. On October 1, 2010, the Student threatened to stab another student; no knife was found. The Student received a 5 day out of school suspension. (B-27 page 1, Testimony of Assistant Principal).
11. On April 27, 2011, the Student stabbed another student in the arm with a pencil. The Student received a one day in-school suspension for this infraction. The PPT conducted a manifestation determination for this infraction. It was determined that the Student's action was not a manifestation of his disability. The Student's current primary disability is speech or language impaired. The PPT recommended an evaluation of the Student. The Parents refused the recommended evaluation. (B-21, Testimony of Assistant Principal).

12. During the 2010-2011 school year, the Student had seven in-school or out of school suspensions. Besides the previously mentioned behaviors, the Student exposed his bare back side in class, exhibited disruptive behavior, used inappropriate language and had a verbal and physical altercation with another student. (B-21, B-27)
13. The Student's current 2010-2011 IEP included counseling support services with the school psychologist for 1/2 hour. The Parent was in disagreement with this service and was not willing to allow the Student to attend. At the May 16, 2011 PPT, the counseling support was removed from the Student's IEP. (Testimony of Coordinator of Special Education, B-22)
14. An FBA is necessary in order to be able to develop a behavioral intervention plan (BIP) for the Student. The BIP would identify the triggers that affect the Student's behaviors and which additional supports may be necessary for the Student to have an appropriate IEP. A behavior scales assessment would be beneficial because of the Student's impulsivity and the results would help to clarify his special education exceptionality. It would assist in developing the Student's goals and objectives. The adaptive behavior scales would assess overall adaptive functioning in a variety of areas including socialization, social communication, conceptual and daily living skills. These assessments would assist in the development of goals and objectives to address social, emotional and behavioral needs. (Testimony of Coordinator of Special Education, B-28)
15. A psychiatric evaluation would assist the Board in the clarification of the Student's exceptionality and developing IEP goals and objectives. If the Student's disabilities were different than his current disability, the Student could be eligible for IDEA protection in a manifestation determination. (Testimony of Coordinator of Special Education)
16. The requested evaluations are necessary in order to know why the Student is behaving inappropriately. The Student tends to have impulsive behaviors and the Board does not have knowledge of what is causing those behaviors. The evaluations will be able to show us "what can be done for the Student." (Testimony of Special Education Teacher, Testimony of Coordinator of Special Education)

**CONCLUSIONS OF LAW and DISCUSSION:**

1. It is undisputed that the Student is entitled to receive special education and related services to obtain a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §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 are provided in conformity with the IEP. 20 U.S.C. §1401(8).

2. The proposed program or placement must be reviewed in light of the information available to the PPT at the time the IEPs were developed. *B. L. v. New Britain Bd. of Educ.*, 394 F. Supp. 2d 522, 537 (D. Conn. 2005).
3. The IDEA has established an affirmative obligation for all Boards of Education to identify, locate and evaluate all students whom they suspect of having a disability. C.F.R. § 300.111 Child find. (a) General. (1) The State must have in effect policies and procedures to ensure that-- (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.
4. Regulations of Connecticut State Agencies expand on the child find requirement of IDEA and require State Boards of Education to make, "...prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance". R.C.S.A. §10-76d-7
5. Written parental consent shall be obtained prior to initial evaluation, reevaluation, initial placement or private placement of a child who requires or may require special education and related services. R.C.S.A. §10-76d-8. Local educational agencies are required to ensure that a reevaluation of each child with a disability is conducted at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary. 20 USC § 1414(a)(2). The LEA is required to provide notice to the parents of a student with a disability that describes any evaluation procedures the agency proposes to conduct. 20 USC § 1414(b)(1).
6. In the current matter, the Student's behavior over the last three years has prompted the Board to seek a psychiatric evaluation and behavioral assessments of the Student. (Findings of Fact Nos. 5, 9 and 11). The Parent has rejected all of the Board's requests. The Student's behaviors have escalated to the point that a manifestation determination has been conducted and the inappropriate behavior has been found not to be a manifestation of his current disability. (Findings of Fact No. 11)
7. IDEA allows Boards to seek an evaluation of a Student if conditions warrant an evaluation. C.F.R. § 300.536(b). The purpose of an evaluation is to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.500(2). Federal and State regulations require a school district to evaluate a Student, "in all areas of suspected disability." The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. § 300.532(g-h). The Student's inappropriate behaviors have created an environment where he is not only a danger to himself but also to his peers. (Findings of Fact Nos. 10, 11 & 12). The Student's inappropriate behaviors are also affecting his ability to obtain an appropriate education. (Findings of Fact No. 6). In this matter it is clear that the

Student's actions warrant evaluations. Where a parent refuses consent for a District reevaluation, a school district may, but is not required to, use due process procedures to override the Parent's refusal to provide consent. See 34 CFR § 300.300(c)(1)(ii). The Board acted appropriately in requesting additional evaluations of the Student and seeking due process to override the Parent's refusal to provide consent for the evaluations and assessments.

8. The Board shall be allowed to perform a psychiatric evaluation, an FBA, a behavior rating scales and a behavior rating scale of the Student.
9. To the extent a procedural claim raised by the Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

**FINAL DECISION AND ORDER:**

1. The Board shall be allowed to conduct a psychiatric evaluation of the Student without the Parent's consent. Within 5 business days of the mailing date (September 2, 2011) of the final decision and order, the Parent shall provide the Board with the name of a psychiatrist or psychologist. The Board's school psychologist shall call the psychiatrist or psychologist selected by the Parent; the school psychologist and the psychiatrist or psychologist selected by the Parent shall together choose an independent psychiatrist to evaluate the Student. If the Parent does not provide the Board with the name of a psychiatrist or psychologist within 5 business days of the mailing date (September 2, 2011) of the final decision and order, the Board shall chose the independent psychiatrist to evaluate the Student.
2. The Board shall be allowed to conduct a behavior rating scale and adaptive behavior scales without the Parent's consent. Board personnel shall conduct these two assessments.
3. The Board shall be allowed to conduct a functional behavioral assessment of the Student without the Parent's consent. Board personnel shall conduct this assessment.
4. The Board shall convene a PPT 5 school days after the independent psychiatrist is chosen. The independent psychiatrist shall be provided with all of the Student's records s/he deems necessary to conduct the evaluation and shall be allowed to observe the Student in his school environment.