

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Wethersfield Board of Education and Student

Appearing on behalf of the Board of Education: Attorney Peter Maher
Shipman & Goodwin LLP

Appearing on behalf of the Student: Parent, *Pro Se*

Appearing before: Attorney Ann F. Bird
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Is the Student entitled to an independent reading evaluation at public expense?

PROCEDURAL HISTORY:

The Wethersfield Board of Education requested a special education due process hearing in the above-captioned matter on March 28, 2016. This Impartial Hearing Officer was appointed to hear the case on April 4, 2016. A telephonic pre-hearing conference was convened on April 22, 2016. Attorney Peter Maher appeared on behalf of the Wethersfield Board of Education ("Board"). The Student's parent appeared on behalf of the Student.

The Board identified the question whether the Student's right to invoke a request for an independent educational evaluation was triggered in this case before the Board's evaluation was completed. In order to resolve this preliminary issue, it was determined that the Board would submit a motion on or before May 6, 2016 and that the Student would have until May 20, 2016 to submit a response. The Board submitted a Motion for Judgment on the Pleadings/Summary Judgment ("Motion") on May 6, 2016. The Student declined to submit a response to the Motion.

The findings of fact and conclusions of law set forth herein refer to documentary evidence submitted with the Motion that was not disputed by the Student.

All motions and objections not previously ruled upon, if any, are hereby overruled. To the extent a procedural claim raised by the Student is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. For reference, *see Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736

(S.D. Tex. 1993); and *SAS Institute, Inc. v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

SUMMARY:

The Student requested an independent reading evaluation while the Board's planned triennial reevaluation of the Student was still underway. The Board filed this due process case in order to request a hearing to show that its evaluation is appropriate. The Board then filed the Motion to establish, based on undisputed facts, that it had no obligation to file this due process case because the Student's request was made before the Board's reevaluation was completed.

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, 20 United States Code ("U.S.C.") §1415(f) and related regulations, and in accordance with the 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:

1. The Student is eligible for special education and related services under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq ("IDEA") and applicable state law.
2. On November 10, 2015, the Student's Planning and Placement Team ("PPT") planned a triennial reevaluation of the Student. (Motion Exhibit B)
3. On January 6, 2016, the PPT recommended that the evaluation also include an assistive technology assessment by Board staff, and that an outside certified Wilson reading teacher be retained to review the Student's records, to observe the delivery of Wilson instruction in school and to meet and confer with the Student's parent and school staff and discuss the parent's concerns. (Motion Exhibit C)
4. On March 10, 2016, the Student's parent requested an independent reading evaluation at public expense. (Motion Exhibit D)
5. In response to the Student's request for an independent reading evaluation at public expense, the Board filed this request for a special education due process hearing.

CONCLUSIONS OF LAW AND DISCUSSION:

1. IDEA affords students identified as eligible for special education and related services a panoply of procedural rights. Among these is the right to obtain an independent educational evaluation of the student at public expense if the student

disagrees with an evaluation obtained by the board of education. 20 U.S.C. § 1415(b)(1); 34 Code of Federal Regulations (“C.F.R.”) § 300.502

2. The purpose of an educational evaluation or reevaluation is to determine whether the student is eligible for special education and related services and to identify the student’s educational needs. 34 C.F.R. §§ 300.301 and 300.303
3. A board of education must evaluate and periodically reevaluate the student in all areas of suspected disability. 34 C.F.R. § 300.304
4. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the board of education that is responsible for the student's education. 34 C.F.R. § 300.502 (a)(3)(i)
5. If a student requests an independent educational evaluation at public expense because the student disagrees with the board of education’s evaluation or reevaluation, the board of education must 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 C.F.R. § 300.502 (b)
6. If a student requests an independent educational evaluation because the student disagrees with the board of education’s evaluation, the board of education may ask, but may not require, that the student provide a reason for his or her objection. 34 C.F.R. § 300.502(b)
7. A student is entitled to only one independent educational evaluation at public expense each time the board of education conducts an evaluation with which the student disagrees. 34 C.F.R. § 300.502(b)
8. A student’s right to an independent educational evaluation at public expense is conditioned upon the student’s disagreement with an educational evaluation obtained by a board of education. 34 C.F.R. § 300.502(b); *R.L. v. Plainville Board of Education*, 363 F. Supp.2d 222 (D. Conn. 2005); *Letter to Zirkel*, 52 IDELR 77 (OSEP Dec. 11, 2008)
9. In turn, a board of education’s obligation to 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 is also conditioned upon the student’s disagreement with an educational evaluation obtained by the board of education. 34 C.F.R. § 300.502(b); *R.L. v. Plainville Board of Education*, 363 F. Supp.2d 222 (D. Conn. 2005); *Letter to Zirkel*, 52 IDELR 77 (OSEP Dec. 11, 2008)
10. A student’s right to an independent educational evaluation and a board of education’s obligation to 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 do not arise until the board of education's educational evaluation is completed, so that the student can disagree with it. 34 C.F.R. § 300.502(b); *R.L. v. Plainville Board of Education*, 363 F. Supp.2d 222 (D. Conn. 2005); *Letter to Zirkel*, 52 IDELR 77 (OSEP Dec. 11, 2008)

11. Accordingly, because the Student here did not disagree with a completed educational evaluation obtained by the Board, the Student did not have a right to an independent educational evaluation at public expense. 34 C.F.R. § 300.502(b); *R.L. v. Plainville Board of Education*, 363 F. Supp.2d 222 (D. Conn. 2005); *Letter to Zirkel*, 52 IDELR 77 (OSEP Dec. 11, 2008)
12. Moreover, because the Student did not disagree with a completed educational evaluation obtained by the Board, the Board did not have an obligation to either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an independent educational evaluation was provided at public expense. 34 C.F.R. § 300.502(b); *R.L. v. Plainville Board of Education*, 363 F. Supp.2d 222 (D. Conn. 2005); *Letter to Zirkel*, 52 IDELR 77 (OSEP Dec. 11, 2008)

FINAL DECISION AND ORDER:

The Student requested an independent educational evaluation but did not disagree with a completed evaluation that was obtained by the Board. Accordingly, the Board did not have an obligation to either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an independent educational evaluation was provided at public expense. As a result, this case is dismissed.

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

ANN F BIRD

Hearing Officer Name in Print