

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Student:

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Appearing before:

Attorney Catherine M. Spain
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Did the Board err in concluding that the Student was ineligible for special education services for the 2012-2013 school year?
2. If so, is the Parents' unilateral placement at Windward School appropriate and reimbursable?

PROCEDURAL HISTORY:

A special education hearing in the above-captioned matter was requested by the Student's attorney and received by the Board on July 30, 2012. A pre-hearing conference was held by telephone on August 9, 2012. The thirty-day resolution period ran through August 29, 2012. Hearings were held on October 2, 5, 23 and 24, November 28 and December 4, 2012. By way of motions for extensions, which were granted to accommodate hearing dates and the submission of briefs, the decision deadline was extended to January 8, 2012. On the final day of hearing, the Parents requested withdrawal of the issues addressing the provision of a free appropriate public education during the 2011-2012 school year. Hearing no objection from the Board, the undersigned hearing officer granted the Parents' motion to withdraw the issues pertaining to the 2011-2012 school year. Post-hearing briefs were submitted by both parties on December 14, 2012.

SUMMARY:

The Student experienced difficulty with reading while enrolled as a first-grader at her district school in Greenwich. The Parents expressed concern about the Student's lack of progress in reading, as well as her reading-related anxiety, to her classroom teacher. The classroom teacher, after observing the Student's lack of progress in word recognition, referred the Student to the school's student assistance team/response to intervention team, which resulted in the Student's receiving specialized reading instruction thrice per week from the school's reading specialist. The classroom teacher also supplemented the Student's regular instruction with extra language-based instruction during the school day.

In spite of these interventions, and private tutoring twice per week, the Student's struggles with reading continued. The Parents expressed their concern about the Student's lack of progress in reading to the classroom teacher, the reading specialist, and the school principal. In the spring, the Parents hired a private evaluator, who concluded that the Student suffers from a reading disorder. The Parents requested a Planning and Placement Team meeting and submitted to the school a Form 621 Referral for Special Education and Related Services. During the Planning and Placement Team meeting, the school members of the team deemed the Student ineligible for special education and related services. After filing for due process, the Parents informed the Board that the Student would be attending the Windward School for the 2012-2013 school year.

STATEMENT OF JURISDICTION:

In accordance with the Uniform Administrative Procedure Act and Connecticut General Statutes ("C.G.S.") §4-176e through §4-178, this matter was heard as a contested case pursuant to 20 United States Code ("U.S.C.") §1415(f) and its related regulations and pursuant to C.G.S. §10-76h and its related regulations.

FINDINGS OF FACT:

1. The Student, currently a second-grader at the Windward School, formerly attended Riverside School ("the school") in Greenwich.
2. During her first-grade year at the school, the Student experienced difficulties in learning to read. (Testimony of Mother)
3. The Student's mother noticed these difficulties and discussed them with Sheri McGowan, the Student's classroom teacher. (Exh. P-33; Testimony of Mother)
4. The Student had difficulty in recognizing words and letter sounds. Due to the Student's weaknesses, Ms. McGowan referred her to Riverside School's student assistance team/response to intervention team ("SAT/RTI") by submitting an SAT Data Preparation Form. (Testimony of Ms. McGowan; Exh. P-25)

5. The question posed by Ms. McGowan on the SAT Data Preparation Form dated November 17, 2011 is "Why is [Student]'s rate of progress so slow?" On the form, Ms. McGowan listed as the Student's weaknesses her lack of retention of letter sounds, sight words and spelling. (Exh. B-5)
6. As a result of the SAT/RTI referral, the Student began meeting with Lynn Sterner, Riverside School's reading specialist, who provided the Student scientific, research-based intervention ("SRBI") three times per week. (Exh. B-9)
7. Mrs. Sterner did not believe that interventions were needed for the Student, whose reading level, according to school records, was on grade level at the beginning of the school year. (Testimony of Lynn Sterner)
8. In January, the Parents informed school personnel that they had hired a tutor, who began in December, to assist the Student with her reading. (Testimony of Mother)
9. John Grasso, the School Principal, sent the Parents a letter dated January 30, 2012 updating them on the Student's SRBI plan. According to the letter, the Student's word practice in school would be intensified because the Student was showing "inconsistency in her ability to recognize sight words and high frequency words." (Exh. P-34)
10. The Student was increasingly frustrated and anxious about her reading. (Testimony of Mother)
11. Throughout the year, the Parents continued to express their concern about the Student's lack of progress in reading to the classroom teacher, the reading specialist, and the school principal. (Exh. P-3)
12. In the spring, the Parents hired Dr. Jill Greenberg to evaluate the Student. The Student was evaluated over the course of six sessions by Dr. Greenberg, who concluded that the student suffers from a reading disorder that adversely affects her ability to learn. (Exh. B-3; Testimony of Dr. Greenberg)
13. Dr. Greenberg administered several reading tests, including the reading component of the Wechsler Individual Achievement Test, the Gray Oral Reading Test (GORT-V), the Test of Phonological Processing (C-TOPP) and the Slingerland Screening for Identifying Children with Specific Language Disability. (Exh. B-3)
14. The Student's reading rate, accuracy and fluency on the GORT-V were well below average. (Exh. B-3; Testimony of Dr. Greenberg)
15. Because the GORT test does not have any picture cues and requires the student to manipulate reading rate, fluency, accuracy and comprehension at the same time, it is a true composite of the student as a reader. (Testimony of Ms. Matera)

16. On the C-TOPP, the Student scored well below average on two rapid-naming tasks. (Exh. B-3; Testimony of Dr. Greenberg)
17. On the Slingerland Screening, the Student made twenty-seven mistakes total, eleven of them involving reading reversals. Any number above eleven mistakes total on the Slingerland Screening indicates a learning disability. (Exh. B-3; Testimony of Dr. Greenberg)
18. The Student failed to make a connection between vowels and vowel sounds. (Testimony of Dr. Greenberg)
19. The Student became highly agitated when asked to read, a negative emotional response that is atypical of a student making steady progress. (Testimony of Dr. Greenberg)
20. The Student's learning disability and related anxiety impair her ability to learn in school. (Testimony of Dr. Greenberg)
21. On June 12, 2012, the Parents submitted to Principal Grasso and Mary Forde, Director of Pupil Personnel Services, a Referral to Determine Eligibility for Special Education and Related Services, State of Connecticut Department of Education Form 621, in order to determine the Student's eligibility for special education and related services, as well as a letter in which they requested that a referral PPT ("Planning and Placement Team") meeting be scheduled. (Exh. B-6)
22. The Fountas & Pinnell system used by the school indicates that first-grade students begin at approximately level "E" and progress to approximately level "J," on average. School records represent that the Student began her first-grade school year in the "on grade level" range (a Fountas & Pinnell "D," where "on grade level" at the start of the year is "D, E and F"), but finished the year below grade-level (a Fountas & Pinnell "H," where "on grade level" at the end of the year is "I, J or K") in spite of SRBI, private tutoring, and supplemental instruction from her first-grade teacher.¹ (Exh. P-46; Exh. B-8)
23. On June 19, a PPT meeting convened. According to the school's meeting summary report, "the purpose of the meeting was to review the parent referral for special education eligibility and consider the initiated private evaluation." At the meeting, the Parents presented the evaluation report of Dr. Greenberg, who was present at the meeting. Ms. McGowan reported that the Student was reading at Fountas & Pinnell "H" level, below benchmark, but that she had learned a list of one hundred "sight words," exceeding the benchmark of eighty-eight words. Mrs. Sterner reported on her sessions with the Student, and provided the Parents books with which the Student could practice her reading fluency. The School Psychologist reported that the Student demonstrates strong social

¹The school's assistant principal mistakenly stated, and the June 19, 2012 IEP meeting summary erroneously states, that the Student began the year at the "B" level. In fact, as Ms. McGowan and Ms. Sterner testified, the Student was tested in the fall at the "D" level. (Exh. P-46; Testimony of Ms. McGowan and Ms. Sterner)

skills and was chosen to participate in a snack group meant to assist other students with their social skills. (Exh. B-1)

24. Even while acknowledging that Dr. Greenberg's report states that the Student has "executive functioning issues ... [and] weakness in far point copying, reversals, and negative emotions around reading," the PPT did not offer to evaluate the Student. In sum, "The school members of the team considered the private evaluation, [the Student's] response to intervention and current functioning and determined that [the Student] does not meet the criteria for disability under the IDEA [Individuals with Disabilities Education Act]." (Exh. B-1; Testimony of Riverside Assistant Principal Marianne McCullough and School Psychologist June Gold; Exh. B-46)
25. In reaching its conclusion that the Student was ineligible for special education and related services, the PPT relied heavily on data provided by the reading specialist and on the fact that the Student had progressed to a Fountas & Pinnell "H" level in reading over the course of the school year. The PPT also relied on the Student's improvement in learning the list of "sight words." (Testimony of Riverside Assistant Principal Marianne McCullough and School Psychologist June Gold; Exh. B-46)
26. On July 30, the Board received the Parents' Request for Due Process, which proposed that the Board reimburse the Parents for their unilateral placement of the Student at Windward School. (Exh. Hearing Officer-1; Testimony of Mother)
27. Windward School is a private school in White Plains, New York, that specializes in instructing students with language-based learning disabilities. (Testimony of Dr. Greenberg)
28. On June 22, 2012, Windward School personnel conducted testing of the Student. Even though she was at the end of her first-grade year, the Student performed below the first-grade level on the GORT-IV in rate, accuracy, fluency and comprehension. (Exh. P-19)
29. Windward School personnel concluded that the Student has a language-based learning disability. (Exh. P-47)
30. The Parents informed the Board in a letter dated August 13, 2012 that the Student would attend Windward instead of Riverside School for the 2012-2013 school year. (Exh. B-6)
31. Dr. Greenberg, who is not affiliated with Windward School, testified that the Student would benefit both academically and emotionally from the education offered there. (Testimony of Dr. Greenberg)
32. In September of 2012, the Parents hired Dawn Matera, an independent learning disabilities specialist, to evaluate the Student. Based on her evaluation of the Student, Ms. Matera testified that there is "no doubt that there needs to be some direct instruction for the language-based reading disability." (Testimony of Ms. Matera)

33. The Student can be seen in a video, which was recorded at the end of September 2012 and to which the Board did not object being entered as an exhibit, attempting to read Club Monster, a Fountas & Pinnell “H”-level book, which, according to her teachers at the school, was a level she had mastered by June of 2012. The Student can read very little of the three and one-half pages she attempts. She reverses letters frequently, for example, reading “monsters” as “mountains” and “snag” as “song.” The Student then complains that she is tired and does not want to continue. (Exh. P-18)
34. Ms. Matera testified that the Student was categorized at the school as being at a reading level above her actual level. (Testimony of Ms. Matera)
35. Dr. Greenberg and Ms. Matera both testified that the Student has developed strategies with which to compensate for her reading difficulties. One such strategy is discerning the meaning of a story from pictures. Another is memorization, which could have contributed to the Student’s eventual success with the list of “sight words” learned by rote. (Testimony of Dr. Greenberg, Tr. 10/23/12; Testimony of Ms. Matera)
36. Ms. Matera, who is not affiliated with Windward School, testified that it would be “a most appropriate placement” for the Student. (Testimony of Ms. Matera)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, et seq., was enacted to ensure that all children with disabilities have available to them a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). Related services include the cost of travel to and from school. 34 C.F.R. §300.34(c)(16); Regulations of Connecticut State Agencies (“RCSA”) § 10-76d-19.
2. A child with a disability is a child evaluated in accordance with §§ 300.304 through 300.311 as having any of several disabilities, including a specific learning disability, and who, by reason thereof, needs special education and related services. 34 C.F.R. §300.8(a).
3. IDEA requires participating states to educate a wide spectrum of disabled children. *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 16 (2008). To meet this goal, all public education agencies are required to have in effect policies and procedures to ensure that all children with disabilities residing in the State, “regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3)(A).” *Id.*
4. This mandate is known as the “child find” obligation, an affirmative obligation of every public school system to identify students who might be disabled and evaluate those

students to determine whether they are indeed eligible. *N.G. v. District of Columbia*, 556 F.Supp.2d at 16. “[T]he Child Find obligation extends to all children *suspected* of having a disability, not merely to those students who are ultimately determined to be disabled. 34 C.F.R. § 300.111(c)(1).” *N.G. v. District of Columbia*, 556 F.Supp.2d at 25.

5. Presented with Dr. Greenberg’s evaluation, Ms. McGowan’s referral of the Student to the SAT/RTI team, John Grasso’s January 30, 2012 letter to the Parents, and the Student’s failure to reach the first-grade benchmark in reading, the PPT was clearly on notice that the Student was suspected of having a learning disability.
6. Furthermore, presented with the Parent’s June 12, 2012 Form 621, the PPT was clearly on notice of the Parents’ request for an evaluation. Form 621 states on its face: “It should be understood that, **in all instances, this is a referral for an evaluation** to determine eligibility for special education services. Actual eligibility for special education services is determined by the PPT only after an evaluation has been completed.” (Emphasis added, Exh. B-6)
7. Connecticut regulations provide that “[e]ach board of education shall accept and process referrals from appropriate school personnel, as well as from a child’s parents, in order to determine a child’s eligibility for special education and related services.” RCSA § 10-76d-7.
8. Furthermore, “[e]ach child who has been referred and who may require special education and related services shall be evaluated in order to determine whether special education is required.” RCSA § 10-76d-9.
9. Form 621 and Connecticut regulations are consistent with federal law, which provides that either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. 20 U.S.C. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b).
10. “Once potentially disabled students are identified and located, the local educational agency must conduct an evaluation to determine whether the child is a child with a disability. 20 U.S.C. § 1414(b)(2)(A)(i).” *N.G. v. District of Columbia*, 556 F.Supp.2d at 16.
11. Although a PPT’s refusal to evaluate a student may be reasonable where a parent’s referral is baseless, this is not such a case.
12. In this case, the PPT erred when, without evaluating the Student, it summarily deemed her ineligible for special education and related services.
13. Data collected by the classroom teacher and the reading specialist, on which the Board relied, did not constitute an educational evaluation of the Student. “In conducting the evaluation, the local educational agency shall use a variety of assessment tools and

strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining whether the child is disabled under the Act.” (Internal quotation marks omitted) *N.G. v. District of Columbia*, 556 F.Supp.2d at 16. See 20 U.S.C. § 1414(b)(2)(A)(i) and RCSA § 10-76d-9(a) and (b).

14. The Board’s claim that the Student’s progress in recognizing a list of “sight words” proves her ineligibility for special education is flawed. As previously stated, the Student has developed strategies to compensate for her reading difficulties. One such strategy is memorization, which explains the Student’s mastery of a word list learned by rote. Dr. Greenberg stated, “When she was confronted with information that’s over-learned ... which is something she sees and does every day, her performance was in the average range.” (Testimony of Dr. Greenberg)
15. The credible testimony of Ms. Matera and Dr. Greenberg, and the compelling evidence presented during the due process hearing, including the video, evince that the Student could not read even at the Fountas & Pinnell H level.
16. As such, the Board’s claim that the Student’s reading progressed to the H level is erroneous.
17. I therefore conclude, based on the strong evidence presented, including the Student’s lack of progress in reading, Dr. Greenberg’s report and credible testimony, and the credible testimony of Ms. Matera and Ms. McGowan, who identified the Student’s lack of progress in November of 2011, that the Student suffers from a language-based disability that adversely affects her ability to learn and that requires specialized instruction.
18. As such, the Student is eligible for special education and related services under the special education category “specific learning disability.” “Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.” 34 C.F.R. § 300.8(c)(10).
19. Accordingly, the Student qualifies for and is entitled to receive a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”), with special education and related services under the provisions of state and federal laws. Connecticut General Statutes §§10-76 et seq.; 20 U.S.C. § 1400, et seq.; 34 C.F.R. § 300.1(a); 34 C.F.R. § 300.17.
20. The Board failed to offer the Student the FAPE to which she was entitled for the 2012-2013 school year.

21. The Parents have demonstrated that Windward School, which specializes in instructing students with language-based learning disabilities, and which is fully accredited by the State of New York Education Department, provides an appropriate educational placement for the Student.
22. The parents shall be reimbursed, for a reading of IDEA that would leave parents without an adequate remedy when a school district unreasonably fails to identify a child with disabilities “would not comport with Congress’ acknowledgement of the paramount importance of properly identifying each child eligible for services.” *Forest Grove School District v. T.A.*, 557 U.S. 230, 245 (2009). “When a child requires special-education services, a school district’s failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP.” *Id.* at 238-39. IDEA authorizes reimbursement for the cost of private special-education services when a school district fails to provide a FAPE and the private-school placement is appropriate, regardless of whether the child previously received special education or related services through the public school. *Id.* at 247. RCSA §10-76h-14. “Without the remedy [sought] . . . a child’s right to a free appropriate education . . . would be less than complete.” (Internal citations omitted.) *Id.* at 244-45.
23. The cost of reimbursement may be reduced or denied in cases where the parents did not inform the public agency that they were rejecting the placement proposed by the public agency, including stating their concerns and their intent to enroll their child in a private school at public expense, at least ten days prior to the removal of the child from the public school. 34 C.F.R. §300.148(d)(1).
24. In this case, the Parents provided the Board with at least ten days’ notice prior to the removal of the Student from the school. Although the Board has not disputed that the Parents provided adequate notice, I clarify for the record that on July 30, the Board received the Parents’ Request for Due Process, which proposed that the Board reimburse the Parents for their unilateral placement of the Student at Windward School. The Parents also informed the Board in a letter dated August 13, 2012 that the Student would attend Windward instead of Riverside School for the 2012-2013 school year. The Student’s removal from the school was effective August 28, 2012, the first day of the 2012-2013 school year for the Greenwich Public Schools. (Exh. Hearing Officer-1; Exh. B-6).

FINAL DECISION AND ORDER:

The evidence presented during the course of this hearing proves that the Student suffers from a language-based specific learning disability which adversely affects her learning and which requires specialized instruction. The PPT thus erred in failing to evaluate the Student and in concluding that she was ineligible for special education and related services. Accordingly, the Board shall reimburse the Parents for 1) the Student’s full 2012-2013 tuition at the Windward School; 2) the cost of obtaining Dr. Greenberg’s evaluation; 3) the cost of obtaining Ms. Matera’s evaluation, and 4) transportation costs

to and from the Windward School for the 2012-2013 school year, as defined pursuant to 34 C.F.R. §300.34(c)(16). No other costs shall be paid by the Board.