

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Monroe Board of Education v. Student

Appearing on behalf of the Parents: Pro Se

Appearing on behalf of the Board: Attorney Marsha Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Ct 06460

Appearing before: Justino Rosado, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Was the Functional Behavioral Assessment (FBA) conducted by the Board appropriate? If not;
2. Should the Board conduct an independent FBA at public expense?

JURISDICTION:

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

SUMMARY:

The Student has been identified with Speech or Language Impairment 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 et seq.

At a planning and placement team (PPT) meeting, the Parent stated that the functional behavioral assessment was not appropriate and requested an independent FBA at public expense. The Board denied the Parent's request and on March 19, 2014 filed for due process.

PROCEDURAL HISTORY:

An impartial hearing officer was appointed on March 19, 2014, a pre-hearing conference was held on March 26, 2014. Hearing dates of May 19 and 29, 2014 and June 2, 2014 were chosen by the parties. The Board presented Exhibits 1 thru 15 which were full exhibits of the hearing.

Parents presented Exhibits 1 through 39 but only Parents' Exhibits¹ 1, 6, 14, 15, 16, 17 and 18 were accepted as full exhibits of the hearing. Parents' Exhibits 7-13 and 18-39 were marked for identification only and were not utilized during the hearing; they are not full exhibits of the hearing. P-21 and P-22 are blank numbers and no exhibit/document was present in the assigned number.

The Parents presented one witness and the Board presented three witnesses. The Board objected to the Parents' witness and their objection was overruled since the witness was listed as a member of the FBA team.

At the May 29, 2014 hearing date, the Mother presented a document which she would read as her testimony. The Mother was informed that a narrative would not be the appropriate way to testify and requested that she redact it to a question and answer format and have someone ask her the question and she would respond with an answer. At the May 19 and 29, 2014 hearing dates, the Mother had someone accompany her to the hearing. The hearing was adjourned to the next scheduled hearing date.

At the June 2, 2014 hearing date, the Mother was not prepared to testify because she did not have anyone to ask her the questions and was not willing to testify.

In order to accommodate the Mother, she was asked if she had the narrative she had previously prepared; if so, she could read it on the record and the Board could question her from the narrative. The Mother stated she had not brought the narrative; to accommodate the Mother, the hearing officer asked if she wanted to have a recess and she could go home and get the narrative. The Mother stated that part of the narrative would not be allowed based on prior rulings from the hearing officer and felt that she was being forced to rest her case. The Board offered to adjourn the hearing and allow the Mother additional time to prepare her testimony or a narrative. The hearing officer agreed to the Board's recommendation. The Mother refused the alternative offered to prepare and would not testify. The Parents rested their case.

A briefing schedule was discussed and the parties agreed to file simultaneous post trial briefs on June 26, 2014. The briefs were timely filed by both parties. The parties were instructed that any arguments presented in the briefs had to have a basis of prior evidence presented during the course of the hearing. The Parents, in their post-trial brief, made reference to articles about FBAs. These articles were not part of the evidentiary portion of this hearing and were not used by the hearing officer in deciding this matter.

This Final Decision and Order set 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, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Institute Inc. v. S. & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D.Tenn. 1985) and *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D.Tex. 1993).

¹ Hereafter Parents' Exhibits will be noted as "P" followed by the number of the exhibit.

The date for the mailing of the Final Decision and Order was extended to accommodate the hearing date and the briefing schedule. The date for mailing the Final Decision and Order is August 1, 2014.

FINDINGS OF FACT:

1. The Student is diagnosed with Speech or Language Impairment and is eligible to receive special education and related services as defined in the Individuals with Disabilities Education Improvement Act ("IDEA") 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. (Board's Exhibit² No. 2).
2. During the 2013-2014 school year, the Student attended the first grade at the Board's elementary school. Based on concerns raised at the December 13, 2013 PPT meeting the Board recommended that an FBA be conducted. (B-2)
3. The Student was exhibiting noncompliance in his school program. The Student was refusing to do his work, follow direction and leave the classroom when required. The Student was also having difficulty on the school bus. The Board was concerned with his safety and recommended that an FBA be performed and special transportation was provided. The Parent agreed with the assessment and signed consent for the FBA. (Testimony of School Psychologist, B-2)
4. At the January 13, 2014 PPT, the Board recommended Creative Solutions to assist with the FBA and the development of a behavioral intervention plan (BIP). (Testimony of School Psychologist, B-7)
5. The Board retained a Behavioral and Educational Consultant from Creative Solutions to conduct the FBA of the Student. The Consultant has extensive experience in conducting FBAs. The Consultant has graduate certification in applied behavioral analysis and a Master's Degree in Education. She has performed over one hundred FBAs and has extensive work experience in collecting data on behavioral programs, analyzing the data and creating behavioral intervention programs for students. (Testimony of Consultant from Creative Solutions (CCS), B-15)
6. The school psychologist led the team that conducted the FBA. She has received various trainings and has been responsible for Functional Behavioral Assessments in various Districts as well as crisis intervention counseling. The school psychologist has also conducted over 30 FBAs. She performed various observations of the Student in order to collect data of the Student's non-compliance behavior. (Testimony of School Psychologist, B-13)
7. An FBA is an assessment to identify the functions of particular targeted behavior and determine the antecedents and consequences of the behavior. The consultant then develops a plan to change that behavior. There is no standard protocol for a functional behavioral assessment. Direct observations of the Student are performed and his

² Hereafter Board's Exhibits will be noted as "B" followed by the number of the exhibit.

interactive style in the base environment is observed. Interviews are conducted with staff and parents and the evaluator looks at collected data and creates a hypothesis based upon the collected data. (Testimony of CCS)

8. The target behaviors should be clearly defined so that any person on the Student's team can identify the behavior in the natural environment. A data collection system has to be developed in conducting FBAs so that everyone is collecting the same data. The information gathered needs to be presented stating the variables in the environment that are generating the target behaviors. (Testimony of Consultant from Cooperative Educational Services (CES)).
9. During the month of January 2014, the Student was observed in a variety of settings during the school day. His attendance and discipline records were reviewed as part of the FBA. His academic performance, prior assessments and health records were also reviewed. (B-9)
10. The CCS evaluator interviewed the Student's classroom teacher, special education teacher, the school principal, the Student's speech and language pathologist and his paraprofessional in order to obtain background information about the Student. (B-9, Testimony of CCS)
11. The Consultant from Creative Solutions attempted to speak with the Parents. The Parents requested that they not be involved. (Testimony of CCS)
12. The CCS evaluator conducted two clinical observations and collected data from different school settings. During one of the observations, the Student demonstrated unsafe behavior in the classroom. He left the classroom and ran to the library and then to the bathroom. During this episode the Student struck the special education teacher and bit the evaluator. The Student was placed in a full security basket hold and did not calm down quickly. The Parent was informed and a report written. (Testimony of CCS, P-17)
13. The evaluator observed the Student in his mainstream classroom setting and observed his noncompliance with directions given. When attempts were made to redirect, the Student would attempt to escape the environment. (Testimony CCS)
14. In accordance with her standard practice, the consultant drafted a report consistent with her standard format. She also drafted a Behavioral Intervention Plan. (B-9, B-11)
15. A total of 30 episodes were recorded during the antecedent, behavior, and consequence (ABC) data collection process. The target behaviors were in the form of non-compliance (non-verbal) and work refusal (verbal). (Testimony of school psychologist, B-9)
16. The primary function of the Student's behavior was to escape or avoid a task or demand. A secondary function of the behavior is to gain attention. (B-9)

17. A Behavioral intervention plan was proposed by the consultant from CCS and reviewed by the PPT on March 10, 2014. The plan addressed the Student's two target behaviors: work refusal and non-compliance. It provided teaching strategies to address the targeted behaviors and a break schedule as a means to give the Student structured appropriate ways of escape. It provided the school team with positive reinforcement strategies to encourage the Student to remain on task. Strategies were provided to address the Student's behavior to gain attention. (B-11)
18. The Parents were not in agreement with either the FBA or the BIP. They could not give specifics as to their disagreements, but felt that the true functions were not addressed in the FBA. They requested an independent FBA conducted by a qualified board certified behavioral analyst (BCBA). (B-11)
19. At the March 10, 2014 PPT, the Board agreed to contract a BCBA from Cooperative Educational Services (CES) to review the Student's record and the FBA. The consultant found that the target behaviors of work refusal and non-compliance were clearly defined. The consultant found a clear connection between the defined behaviors and the data collection. The purpose of the FBA was also clearly defined. The consultant was of the opinion that additional information from a third party would not be beneficial or required. The results of the FBA performed by the Board were accurate and comprehensive. (Testimony of Consultant from CES, B-12)

CONCLUSIONS OF LAW and ARGUMENT:

1. It is undisputed that the Student is eligible for special education and related services as set forth in IDEA, 20 U.S.C. Sec. 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 that are provided in conformity with the IEP. 20 U.S.C. §1401(8).
2. The Board filed this request for due process in accordance with the provisions of 34 C.F.R. Section 302.502(b)(2) which provides that, "[I]f a parent requests an independent evaluation at public expense, the public agency must, without unnecessary delay... i)[f]ile a due process request to show that its evaluation is appropriate;" if the parents' request is not granted. The sole issue to be determined in this matter is whether the Board's evaluation is appropriate.
3. OSEP explained in *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007), that a district that intends to conduct a functional behavioral assessment (FBA) should ask itself one question: Will the FBA focus on the educational and behavioral needs of a specific child? If so, the FBA qualifies as an evaluation or reevaluation under Part B and triggers all of the accompanying procedural safeguards, including the need to seek parental consent. In the current matter, the Parent consented to the FBA. (Findings of Fact No. 2)

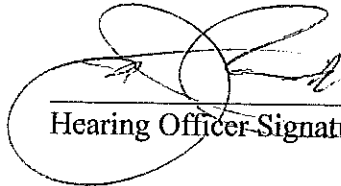
4. In determining the standard of appropriateness of the evaluation, IDEA regulations provide standards for the manner in which evaluations are to be conducted. These standards are set forth in 34 C.F.R. §300.300 to 34 C.F.R. §300.311. Connecticut regulations implement these IDEA regulations in R.C.S.A. §10-76d-9(a).
5. In reviewing 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. *Warren G. v. Cumberland County School District*, 190 F.3d 80, 87 (3rd Cir. 1999)
6. The IDEA does not specify who is qualified to conduct FBAs. In *Letter to Janssen*, 51 IDELR 253 (OSERS 2008), OSERS stated that there is no requirement that a board-certified behavior analyst or any other specific individual conduct an FBA unless state law requires it. Although the IDEA does not state who may conduct FBAs, the evaluator who conducts an FBA must be adequately trained. Connecticut does not provide a requirement for an evaluator to conduct an FBA. I find the evaluator qualified to conduct an FBA. She was supervised in this assessment by the school psychologist who also was very well qualified to supervise the assessment, and did so in an appropriate manner. She has also conducted various FBAs. (Findings of Fact Nos. 4, 5 and 6)
7. The FBA used multiple tools and assessments, which further leads to the conclusion that this assessment was appropriate. According to the consultant and school psychologist, an FBA consists of both indirect and direct assessment: data collection across multiple environments, direct observations of the student, standardized questionnaires of staff and the student, review of records, staff consultation and data analysis. This protocol was followed and set forth in great detail in the comprehensive report. The FBA is clearly appropriate in its use of nondiscriminatory assessments tools which included observations. Based on the expansiveness of this FBA, and the professional manner in which it was completed, there is no additional, better information that could be obtained from another FBA. (Findings of Fact Nos. 17 and 19)
8. 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 Functional Behavioral Assessment conducted by the Board is appropriate.
2. The Board does not have to fund the independent Functional Behavioral Assessment requested by the Parents..

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

Justino Rosado
Hearing Officer Name in Print