

June 21, 2011

Final Decision and Order 11-0355

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Westport Board of Education v. Student

Appearing on Behalf of the Parents:

Pro Se

Appearing on Behalf of the Board:

Marsha B. Moses, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing Before:

Attorney Justino Rosado
Hearing Officer

ISSUES:

1. Were the speech and language evaluations performed by the Board in 2010 appropriate? If not;
2. Are the Parents entitled to an independent speech and language evaluation at public expense?

FINAL DECISION AND ORDER

SUMMARY:

The Student has not been identified as a student who is entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEIA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At a PPT meeting, the Parents rejected the program offered by the Board for the 2010-2011 school year. The Parents were not in agreement with the speech and language evaluations performed by the Board and requested an independent speech and language evaluation of the Student at Board expense. The Board denied their request and filed for due process as required by 34 C.F.R. § 300.502.

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 or about March 15, 2011, the Board filed for due process. An impartial hearing officer was appointed on March 16, 2011 and a pre-hearing conference scheduled for April 6, 2011. The Parents were not available and another pre-hearing conference was

scheduled for April 7, 2011. The Parents again were unavailable for the pre-hearing conference and a hearing date of May 4, 2011 was scheduled. Notice of the hearing date was sent to the Parents. The Board submitted 26 exhibits which were received as full exhibits of the Board.

On or about April 26, 2011, the Parents presented a witness list and the Board objected to the relevancy of three of the Parents' witnesses. The Parents were asked to present an offer of proof as to the witnesses. As of the day of hearing, no offer of proof had been received from the Parent. The parties agreed to file post hearing briefs and a briefing schedule was agreed to by the parties. The post hearing briefs were to be filed by May 18, 2011.

The date for the mailing of the final decision and order was extended on the record with the agreement of all parties in order to accommodate the hearing date and the mailing of the final decision and order. The mailing date for the final decision and order is June 21, 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 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); Bonnie Ann F. v. Callallen Ind. Sch. Bd., 835 F. Supp. 340 (S.D. Tex. 1993).

FINDINGS OF FACT:

1. The Student is a student in the Board's school and has not been identified as a student requiring special education and related services as defined in IDEIA 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. (Board's Exhibit-10¹, Testimony of School Psychologist)
2. The Mother expressed concern with the Student's reading capabilities. The Mother was concerned that in the 1st grade, even though the Student had made gains in reading, it was recommended that he continue reading during the summer in order not to regress. This same recommendation was also made in the Student's 2nd grade progress report. (Testimony of Mother, B-1, B-2)
3. In January 2010, the Father expressed concern about his son's school performance and asked the school psychologist for assistance in helping his son succeed. The school psychologist spoke with the Student's teachers. The regular education teacher stated that the Student was doing grade level work and did not need support. The teacher found that the Student was on grade level but at the insistence of the Parent did an assessment. The teacher used Response To Intervention (RTI) as part

¹ Hereafter Board's Exhibits will be noted with "B" followed by the exhibit number.

- of identification procedures for learning disabilities and to see if there was a need for regular education support services to be provided. A meeting was held to discuss the finding with the Parents. Although the school team did not feel the Student needed support, RTI support was provided for him in reading. (Testimony of School Psychologist, B-4)
4. In May 2010 it was noted that the Student was making progress in his RTI in reading. The Student, before RTI, did not read grade appropriate books but now it was noted that he was making progress with this issue. (Testimony of School Psychologist, B-5)
 5. The Parents continued to be concerned with the Student's language, language decoding and executive functioning and they had the Student evaluated by the Soffit Center. The evaluation showed that the Student had a full scale IQ of 102 and average reasoning skills, vocabulary knowledge and social judgment. The Student was found to have a slow processing speed and difficulties with word retrieval. Emotionally, the Student was affected at times by expressive struggles and difficulty focusing on relevant details. He was concerned about what was wrong with him. The Soffit Center recommended that the Student have a comprehensive language evaluation and recommended that the Parents contact the school regarding a Section 504 Accommodation Plan. (B-6)
 6. The Parents shared the summary report of the Soffit Center evaluation with the Board. The Parents requested a PPT. On September 16, 2010 a PPT was held to review the Soffit Center evaluation. Based on the evaluation provided by the Parents, the team recommended a comprehensive speech and language evaluation by the school's speech and language pathologist and a psychological evaluation by the school psychologist. (B-10)
 7. The school psychologist performed a psychological evaluation of the Student. The evaluator observed the Student in the classroom and noticed that the Student was observant and attentive and when he was called upon he was able to respond. The Student was not afraid to ask for assistance when he was unsure of how to proceed. He appeared socially comfortable and readily engaged in conversation with his peers. In the evaluations conducted, the Student demonstrated strength in short term memory and his working memory was well developed. His verbal ability and long-term retrieval skills were age appropriate but the Student demonstrated relative weakness in processing speed. It was recommended that the Student should be regularly and consistently monitored by the RTI team. (Testimony of School Psychologist, B-14)
 8. An educational assessment was performed by the special education teacher. The Student demonstrated sufficient academic skills in reading, written language and math to be successful in his grade curriculum. (B-15)

9. Before performing a speech and language assessment of the Student, the speech and language pathologist reviewed the evaluation from The Soffit Center and did informal interviews of the Student's teachers. She obtained information from other evaluators who had performed other assessments. The speech and language pathologist performed the following assessments: (1) Comprehensive Assessment Of Spoken Language (CASL); (2) Test of Auditory Process -3 (TAPS-3); Test of Narrative Language (TNL); Test of Word Finding 2nd Edition (TWF-2); and The Listening Comprehension Test-2 (LCT-2). (Testimony of Speech and Language Pathologist, P-12)
10. The speech and language pathologist is a well qualified pathologist who has worked with children in a school setting for 6 years. The pathologist received formal training in graduate school and in a fellowship on how to conduct evaluations. She has diagnosed, managed, planned, written and implemented programs for children with language impairment, learning disabilities and autism. She has performed extensive speech and language evaluations. (B-26)
11. The CASL showed that the Student's language skills, expressive, supralinguistic and syntactic skills were within the average range. The expressive language portion of the assessment uses subsets to evaluate spoken language including vocabulary, sentence structure and use of grammatical morphemes. The supralinguistic language composite evaluated higher level language skills that are necessary to succeed in higher grades. This assessment would have indicated specific areas of the Student's weakness. The assessment demonstrated that the Student's supralinguistic language skills are within normal range when compared to his peers. (Testimony of Speech and Language Pathologist, P-12)
12. The TNL showed that the Student's narrative comprehension was not as strong as his oral narration, but his Narrative Language Ability Index was within the average range. The Student had problems with character names but he did well with plots and content; he scored within the average range in this assessment. (Testimony of Speech and Language Pathologist, P-12)
13. The TWF-2 is a standardized assessment of word finding skills. These are assessed across different word naming contexts: Picture Naming Nouns, Picture Naming Categories and Sentence Completion Names. The Student demonstrated adequate comprehension of all target words. (Testimony of Speech and Language Pathologist, P-12)
14. The TAPS-3 evaluates the ability to process information that is presented verbally with no visuals. This assessment evaluates the Student's ability to understand and learn language, evaluates basic memory processes when information is presented orally and also evaluates the ability to retain information, understand, and infer meaning. The Student scored within the average range on the overall composite score. (Testimony of Speech and Language Pathologist, P-12)

15. The Listening Comprehension Test evaluated listening skills in a real life classroom setting. The Student scored within the average range on the overall composite score. (Testimony of Speech and Language Pathologist, P-12)
16. While there are other tests of language skills that can be performed, many of them look at the same areas as were tested. There was no other test performed because it would be unethical to continue testing the Student when he is showing developmental skills within the average range. (Testimony of Speech and Language Pathologist)
17. The evaluations conducted by the Board were provided to the Parents and the results of the evaluations were discussed with the Parents. At the November 11, 2010 PPT the Student was found not eligible for special education and related services but was referred to the Section 504 team. The Parents requested an independent speech and language evaluation but the Board denied the Parents' request. The Board then requested this hearing. (Testimony of School Psychologist, B-16)

CONCLUSIONS OF LAW:

1. The Board filed this request for hearing in accordance with the provisions of 34 CFR Section 300.502(b) which provides that if "a parent requests an independent evaluation at public expense, the public agency must, without unnecessary delay,-- [f]ile a due process hearing to show that its evaluation is appropriate," if the parent's request is not granted. The sole issue to be determined is whether the Board's evaluations are appropriate.
2. In determining 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)
3. The speech and language pathologist followed all professional standards for evaluations, conducted all protocols and inspected all areas of language testing. She used instruments that are accepted and used as legitimate assessment tools within the speech and language pathologist profession.
4. The pathologist conducting the speech and language evaluation was well qualified, thoroughly trained, skilled and knowledgeable, with appropriate credentials for completing the assessment. The speech and language evaluation used multiple tools and assessments, which further leads to the conclusion that this assessment was appropriate. This protocol was followed, and set forth in great

detail in the comprehensive report. The speech and language evaluation is clearly appropriate in its use of nondiscriminatory assessments tools which included observations.

5. The speech and language evaluation conducted by the Speech and Language Pathologist complied with all professional standards and was appropriate. In the professional manner in which the speech and language evaluation was conducted and completed, there is no additional or better information that could be obtained from another speech and language evaluation.

FINAL DECISION AND ORDER:

1. The speech and language evaluations performed by the Board are an appropriate evaluation and meet all IDEIA criteria for an appropriate evaluation.
2. The Parents are not entitled to an Independent Speech and Language Evaluation at the Board's expense.