

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Greenwich Board of Education v. Student

Appearing on behalf of the Parent:	Parent, Pro Se
Appearing on behalf of the Board:	Attorney Abby Wadler Assistant Town Attorney Greenwich Town Hall – Law Dpt. 101 Field Point Road Greenwich, CT 06830
Appearing before:	Attorney Laura Share Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Was the Occupational Therapy specialist’s observation/evaluation for dysgraphia, which was summarized at a PPT on June 20, 2018 appropriate?
2. If not, was it appropriate for the Board to deny the neuropsychological independent educational evaluation?

**PROCEDURAL HISTORY:**

On July 11, 2018, the due process hearing request in this case was initiated by the Greenwich Board of Education (“Board”) and this Impartial Hearing Officer was assigned to this case.

At the pre-hearing conference convened on July 26, 2018, the Student’s mother (“the Parent”) appeared on behalf of the Student and Attorney Abby Wadler appeared on behalf of the Board. During the pre-hearing conference, it was established that the deadline for filing the final decision in this case was August 24, 2018, and the first evidentiary hearing date was scheduled for August 17, 2018.

On August 1, 2018, the Board requested a postponement of the first day of hearing scheduled for August 17, 2018, on the ground that integral Board personnel were unavailable. On August 7, 2018, the Parent also requested a postponement of the first day of hearing and of the mailing date of decision deadline to obtain the correct documents pertaining to this case. On August 13, 2018, the first day of hearing was postponed to September 14, 2018 and the deadline for filing the final decision in this case was extended to September 24, 2018.

On August 17, 2018, the first day of the hearing convened and the Board and the Parent requested a second hearing date. In order to accommodate the second hearing date, on September 17, 2018, the Board requested a second extension of the deadline for filing the final decision, and on September 19, 2018, the mailing date of decision deadline was extended to October 24, 2018.

On October 10, 2018, the second day of the hearing convened. In order to accommodate the third hearing date, on October 14, 2018, the Parent requested a third extension of the deadline for filing the final decision, and on October 18, 2018, the mailing date of decision deadline was extended to November 23, 2018.

On November 7, 2018, the third day of the hearing convened. In order to accommodate the fourth hearing date, on November 12, 2018, The Board requested a fourth extension of the deadline for filing the final decision, and on November 21, 2018, the Parent requested a fourth extension of said deadline to accommodate the hearing schedule. On November 21, 2018, the parties also requested a fifth extension of the deadline to accommodate the hearing schedule. On January 6, 2019, said requests were granted and the mailing date of decision deadline was extended to January 23, 2019.

On January 22, 2019, the fourth day of the hearing convened. In order to accommodate the drafting of the decision, the Board requested a sixth extension of the deadline for filing the final decision, which was granted on the record, and the mailing date of decision deadline was extended to February 22, 2019.

The following witnesses testified:

The Parent

Lisa Strizver

Darlene Angotto

Jennifer Monahan Lagreca

Dr. Meagen Barton, OTD, OTR/L

Karen Vitti

Trudi Durrell

Hearing Officer Exhibit HO-1 was entered as a full exhibit.

Board Exhibits B-1 through B-20 were entered as full exhibits.

Parent Exhibits A-1 through A-20 and A-B-21 through A-B-36 were entered as full exhibits.

The Board objected to the submission of audio recordings of the Student's PPT meetings (Exhibits A-4B and A-6-F). The Board's objection was sustained on the ground that said audio recordings were repetitious, and thus not entered as full exhibits in the hearing.

The Board objected to the Parent submitting supplemental due process documents (Exhibits A-C1 through A-C46). The Board's objection was sustained on the ground that said supplemental records were irrelevant, and thus not entered as full exhibits in the hearing.

The Parent's request for Hearing Officer to order the Board to produce current writing samples and additional past writing samples of the Student was denied because it fell under the Family Educational Rights and Privacy Act (FERPA) and was irrelevant.

The Parent's request to introduce an Independent Occupational Therapy Evaluation conducted by Aubrey Schmally on/around October 17, 2018 was denied because it was irrelevant.

The Parent's request to present the testimony of the Student's current teacher, Jean Ackroyd was denied because it was irrelevant.

The Parent's request to present the testimony of the Student's current special education teacher, Kathryn Natale was denied because it was irrelevant.

All motions and objections not previously ruled upon, if any, are hereby overruled.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of fact, and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent 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. Calallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex., 1993).

### **SUMMARY**

The 10-year old Student was identified for special education services under the Other Health Impaired classification in March of 2018. During the Student's PPT on April 20, 2018, the team agreed to an occupational therapy evaluation to further assess sensory processing and visual motor integration (VMI) as related to the Student's functioning in the educational setting. An occupational therapy evaluation was performed using an extensive battery of standardized tests, review of school records, and observations of the Student. In June of 2018, the Parent disagreed with the results of the evaluation and requested an Independent Educational Evaluation ("IEE") at public expense. Specifically, the Parent requested a neuropsychological evaluation to determine dysgraphia. The Board promptly initiated the subject request for due process within a short time thereafter and a hearing was convened. The Hearing Officer finds the evaluation to be appropriate and sufficient and that the Parent is not entitled to an IEE at public expense.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §1400 et seq., according to the specified procedures of 20 U.S.C. §1415, and related regulations, Connecticut General Statutes ("C.G.S.") §10-76h and related regulations, and in accordance with the

Connecticut 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:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, this Impartial Hearing Officer finds the following facts:

1. Currently, the Student is 10 years of age and is enrolled in the 5<sup>th</sup> grade at Parkway School in Greenwich. Prior to attending Parkway School, the Student attended Hamilton Avenue School in Greenwich. (Testimony of Parent; Testimony of Angotto; HO-1; B-1; B-4).
2. While the Student attended Hamilton Avenue School, the Parent was concerned about the Student's fine motor skills, visual skills, and perception, and believed that the Student had dysgraphia. Dysgraphia is a learning disability in either written expression or in fine motor skills. It is a neurological learning disability that is not typically isolated to one area, and is characterized by processing issues and stamina problems i.e. being unable to complete writing tasks. A dysgraphia determination is based on multiple measures, such as writing samples, class performance, sensory skills, and visual motor integration (VMI) scores, which an OT specialist is qualified to evaluate. (Testimony of Barton; Testimony of Parent; Testimony of Strizver).
3. On March 15, 2018, a PPT meeting convened to determine whether the Student was eligible for special education. The Student was identified as eligible for special education and related services under the Other Health Impaired classification with a determination of Attention Deficit Hyperactivity Disorder ("ADHD"). The Parent did not object to said classification nor the Student's Individualized Education Program ("IEP") dated March 15, 2018, and the PPT recommended an occupational therapy ("OT") evaluation because there were concerns about the Student's motor and visual coordination, and the Parent consented to said evaluation. In the school context, OT supports a child in his academics by assisting with his ability to sit; attend; focus; participate; write; and transition. (Testimony of Barton; Testimony of Parent; Testimony of Vitti; B-4; B-6).
4. According to Ms. Angotto, the Student's regular education teacher, the Student met age appropriate benchmarks in March of 2018, but his ability to focus impacted his ability to learn. The Student required a lot of redirection because he was talkative, impulsive, and easily distracted. The Student had trouble organizing, keeping his shoes on, and sitting up straight while writing. In addition, Ms. LaGreca did not observe the Student's hands fatigue and stated that the Student knew when to use a capital letter but did not consistently use capitalization appropriately. (Testimony of LaGreca; Testimony of Angotto; Testimony of LaGreca).

5. On March 15, 2018, the PPT asked Dr. Meagen Barton, OTD, OTR/L to conduct an OT evaluation to further assess the Student's sensory processing and visual motor integration as related to the Student's functioning in the educational setting. Dr. Barton is a working clinician who oversees OT and is employed by Constellation, a private provider of occupational therapy which contracts with the Board. She evaluates children to determine whether OT is beneficial for a child, conducts screenings, and provides direct treatment to children. Dr. Barton has conducted 20-30 OT evaluations throughout her 12-year career. (Testimony of Barton; B-24; B-6). Although her current license does not permit her to diagnose dysgraphia, dysgraphia is characterized as a deficiency in sensory processing and visual integration, which Dr. Barton is qualified to evaluate.
6. On May 16, 2018, Dr. Barton wrote an occupational therapy evaluation of the Student. She administered the following standardized assessments: Beery-Buktenica Developmental Test of Visual-Motor Integration; Beery-Buktenica Developmental Test of Visual Perception; Beery-Buktenica Developmental Test of Motor Coordination; and Sensory Processing Measure. Dr. Barton also reviewed the Student's records and conducted clinical observations, teacher interviews, and skill/clinical observations in the classroom setting to develop a comprehensive overview of the Student. Dr. Barton also met the Student in the resource room and used the Beery-Buktenica Developmental Test of Visual-Motor Integration - 6<sup>th</sup> Edition (VMI), which analyzes underlying components of the Student's vision and motor aspects. The Student scored within the average range for VMI and Visual Perception and slightly below the average range for Motor Coordination. The Student's margin of error for all work was minimal, which spoke to an awareness/motor control that he demonstrated despite a score in the "below average" range. (Testimony of Barton; Testimony of Parent; B-11a).
7. Most notably, the Student had inconsistent VMI scores as evidenced by the fact that his scores were initially below average when the Student was tested by Loren Castro, M.A., P-M.A.C. in January of 2018 but then he scored within the average range a few months later when Dr. Barton tested him in May of 2018. Typically, a child with dysgraphia would consistently score below average since dysgraphia is a neurological impairment. (Testimony of Strizver).
8. Dr. Barton concluded that there were areas where the student needed support, such as distractibility and social implications, and that the Student's ADHD determination was associated with those targeted areas. In regards to handwriting, the Student had minimal/low errors and even though he scored below average, he had an awareness of the necessary components of handwriting: visual perception; making sense; and motor coordination. (Testimony of Barton).
9. Dr. Barton's evaluation found that the Student demonstrated relatively consistent scores across areas of sensory processing within the classroom setting and that his negative behaviors aligned with his eligibility identification. Dr. Barton also

- concluded that positive behavioral reinforcers, opportunities to increase self-awareness, access to sensory breaks on a per need basis, and earned “break time” were supported in programming for the Student. In addition, Dr. Barton concluded that the strategies being utilized were consistent with the recommendations she would make to the school-based team from an occupational therapy perspective based on the Student’s OT evaluation. The Parent disagreed with Dr. Barton’s evaluation. (Testimony of Parent; B-11a).
10. On May 16, 2018 a PPT meeting reconvened to review Dr. Barton’s OT evaluation and to recommend strategies to the Parent that the Student could work on at home, which the parent believed were “useless.” At said meeting, the PPT recommended that Dr. Barton conduct follow-up observations of the Student in the general education classroom because the PPT requested additional information about the Student’s handwriting. (Testimony of Parent; Testimony of Barton; B-4; B-11a).
  11. On June 20, 2018, Dr. Barton wrote an Educationally Related Observation of Handwriting Skills to assess the Student’s handwriting in the context of the school setting, and concluded that her OT evaluation dated May 16, 2018 was appropriate. Dr. Barton concluded that the Student was able to control his posture, held his pencil appropriately, and used a little increased pressure on the paper even though he had dynamic movement with his fingers. She also commented that the Student demonstrated awareness of spatial (line) boundaries. Dr. Barton did not observe the Student clench his jaw and noted that the Student had a tripod/3-point grasp when he wrote. The Student was also better able to attend to boundaries when he had lines on the paper/greater structure in his work. Dr. Barton recommended that the school-based team continue to offer and utilize “organizers” for writing tasks, add additional lines to pre-drawn boxes to increase the Student’s attention to spatial boundaries, use a writer’s checklist, use a highlighter, engage in hand/arm exercises as pre-writing activities, and provide access to a slant board. (Testimony of Barton; B-12).
  12. On June 20, 2018, a PPT meeting reconvened to review the OT observations as a follow up to the OT evaluation that was reviewed on May 16, 2018. Based on said observations, it was determined that OT services were not necessary. The Parent requested a neuropsychological evaluation because she disagreed with the outcomes of Dr. Barton’s evaluations and did not think that she was qualified to diagnose dysgraphia. The Parent testified that Dr. Barton never spoke with her, Dr. Barton only observed the Student in the resource room, and Dr. Barton did not observe the Student writing. The PPT denied the Parent’s request for an IEE because it concluded that Dr. Barton’s evaluation was appropriate. (Testimony of Barton; Testimony of Angotto; Testimony of Parent; B-3, p. 2).

### **CONCLUSIONS OF LAW AND DISCUSSION:**

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 party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 C.F.R. §300.521. R.C.S.A. 10-76h-14(a) The purpose of an evaluation is to determine if the student is a child with a disability under 34 C. F. R. §300.8 and eligible for special education, and to determine the educational needs of the child. 34 C.F.R. §300.301(c)(2)

A child is determined to be (or remain) eligible for such special education after an “appropriate” evaluation, i.e. one that complies with the federal and state regulations to produce enough information to determine whether the student is (or remains) eligible to receive special education services and to develop an individualized education program for the student. 34 C.F.R. §300.301- 300.305, R.C.S.A. Sec. 10-76d-9(a) and (b).

In determining whether or not a Board evaluation is appropriate, 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. 34 C.F.R. §300.304(c), 300.305 See, *Enfield Board of Ed. v. Student, Final Decision and Order 18-0262 (Conn. 2018)*; *Westport Board of Ed. v. Student, Final Decision and Order 11-0355 (Conn. 2011)*; *Warren G. v. Cumberland County School District, 190 F.3d 80, 87 (3rd Cir. 1999)*; *S. Kingstown Sch. Comm. v. Joanna S., 773 F.3d 344 (1st Cir. 2014)*; and *Doe v. Cape Elizabeth School District, 832 F.3d 69 (1st Cir. 2016)*

In this case, pursuant to 34 C.F.R. §300.502 and R.C.S.A. §10-76d-9(c)(2), the Parent informed the Board that she disagreed with Dr. Barton’s OT evaluation at the PPT on June 20, 2018, and the Board timely filed this due process request on July 11, 2018 to determine whether its evaluation was appropriate and met the stated purpose of 34 C.F.R. §§300.301-300.305.

The Board's evaluation was conducted under the requirements of §300.304(c); to wit,

(1) Assessments and other evaluation materials used to assess a child under this part:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the

child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 34 C. F. R. § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

It is found by a preponderance of the evidence that Dr. Barton's occupational therapy evaluation met the standard of appropriateness, in that: 1) she was qualified to conduct an evaluation of the Student; 2) she administered a comprehensive battery of essential tests to the Student under appropriate conditions; and 3) reviewed the extensive records comprising the Student's educational, behavioral, and psychological background, in addition to observing the Student and 4) used the information to make recommendations as to the Student's performance.



**FINAL DECISION AND ORDER:**

1. The Board's evaluation is appropriate.
2. The Parent is not entitled to an Independent Educational Evaluation at public expense.