

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Greenwich Board of Education v. Student

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Attorney Raymond J. Rigat
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Was the Board's initial screening of the Student an evaluation by the Board?
2. If yes, was that evaluation appropriate?
3. If not, are the Parents entitled to an Independent Educational Evaluation, ("IEE") at public expense?
4. If the Board's initial screening of the Student was not an evaluation by the Board, should the Board be allowed to test the Student in the areas of cognitive, social-emotional, behavioral, attention, executive functioning, and academic achievement in the area of reading, writing, and math?

PROCEDURAL HISTORY:

On June 12, 2019 the Board requested a Due Process Hearing under 34 CFR § 300.502(b)(2)(i), because it denied the Parents' request for an Independent Educational Evaluation, ("IEE").

Further, the Board filed its Due Process request seeking an order to conduct an evaluation of the Student, because the Parents refused to sign consent.

A prehearing telephone conference was conducted on July 1, 2019. At this conference, the Board indicate that it would seek a 30-day extension of the mailing date. The Board filed a written request for an extension, which was agreed upon by the Parents, and the mailing date was extended by the Hearing Officer to August 28, 2019. The hearing was scheduled for July 31, 2019.

On July 24, 2019, the Parents filed a motion to dismiss the Board's Due Process request arguing that it was untimely filed. The Board filed an opposition to this motion on July 29, 2019. The Hearing Officer consolidated the Parents' motion with the hearing on the underlying Due Process petition filed by the Board.

The hearing convened on July 31, 2019, and concluded that same day. Both parties made opening statements, and presented closing arguments at the conclusion of the hearing. They were given until August 15th, which was extended to August 19th, to submit briefs in support of their respective positions.

The Board called four witnesses: (1) Ms. Lora Parisi, Assistant Principal of the Eastern Middle School; (2) Ms. Stephanie Seanor, Occupational Therapist; (3) Ms. Kelly Siegrist, the School Psychologist; and (4) Ms. Rand Price, the School Social Worker..

The Parents called two witnesses: (1) Robert S. Kruger, Ph.D., Psychologist; and (2) the Student's Mother.

The Board submitted Exhibits B-1 through B-11. The Parents submitted Exhibits P-1 through P-13. These exhibits were entered as full exhibits without objection.

The Board and the Parents submitted post-hearing briefs in support of their respective positions.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

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. *Bonnie Ann F. v. Callallen Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993).

STATEMENT OF 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 Administrative Procedure Act ("UAPA"), CGS §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. The Student was in the 7th grade at the Eastern Middle School during the 2018-19 school year. (B-1).
2. The Student's first quarter grades were all A's and B's. (Testimony of Ms. Parisi).
3. At the end of October, the Student began to express thoughts of hurting herself, but was assessed as being at low risk of self-harm, however her grades started to decline and the school added academic support. (Testimony of Ms. Parisi).
4. On December 19, 2018, the Mother e-mailed Ms. Joanna Savino , the vice principal of the Eastern Middle School, expressing concerns over the Student's executive functioning, homework completion and behavior at home; the Mother requested a complete educational evaluation of the Student. (B-7; Testimony of Ms. Parisi).
5. Ms. Parisi met with the Parents on December 21, 2018, informing them that she would schedule a planning and placement team meeting, ("PPT"), and that the school would be conducting a screener prior to the PPT meeting. (Testimony of Ms. Parisi).
6. The school psychologist performed the Connors ADHD Index, (Connors AI). In the school psychologist's report, she described the Connors AI as an assessment tool used as a screener: "...to obtain teacher's observations about a child's behavior in the school setting. The Connors AI consists of 10 items that best discriminate clinical cases from general population cases in children and adolescents aged 6 to 18 years old. This report provided information about the teacher's assessment of [Student] and how she compares to other students. The Connors AI gathers information on the possible presence of an Attention Deficit Hyperactivity Disorder (ADHD). It is important to note this instrument is a screener, and should be interpreted within the context of teacher reports, parent reports, academic achievement and [Student's] overall daily functioning." (P-6).
7. Prior to the PPT meeting, Ms. Kelly Siegrist, the school psychologist, performed the 10 question Connors AI, and prepared a three page report which she shared with the PPT. (Testimony of Ms. Siegrist; P-6).
8. Ms. Siegrist testified that the Connors AI is a screener, and not the more comprehensive Connors evaluation (which consists of over 100 questions).
9. Ms. Siegrist testified that the Connors AI screener is not a diagnostic tool, but a data point used to determine the need for comprehensive evaluation. (Testimony of Ms. Siegrist; Testimony of Ms. Parisi).
10. Ms. Siegrist further described the Connors AI as: "a screener [that] is an assistive tool that we use. It discriminates the clinical population from the general education

population. It's not diagnostic in nature. So, it's a document we use just as a data point.” (Testimony of Ms. Siegrist).

11. The School used the Conners AI evaluation for multiple purposes. Initially, to determine whether there was a basis for the Mother's concerns that the Student should be evaluated, and then to provide instructional support and accommodations: "... given the fact that she scored elevated in both areas, then we used it to roll into a 504 meeting to provide instructional support and accommodations.” (Testimony of Ms. Parisi).
12. A PPT meeting was conducted on January 9, 2019, where it was determined that the Student was not eligible for Special Education. The Parents were provided prior written notice that the PPT proposed that the Student was not eligible for special education based on review of records dated 1/9/19 and teacher reports dated 1/9/19. This proposed action was recommended without a completed initial evaluation of the Student. (B-4).
13. In March, there was a change in the Student's classroom performance and behavior. (Testimony of Ms. Parisi).
14. The Student was not connected into school, not handing in assignments, not connecting with adults in school, starting to refuse to do work for her English teacher, and engaged in disruptive behavior. (Testimony of Ms. Parisi). The Student was struggling with tests by the end of the third quarter in April. (Testimony of Ms. Parisi). The Parents, through their attorney, requested an IEE of the Student on April 5, 2019. (B-3).
15. On April 25, 2019, the Board scheduled a PPT meeting for May 7, 2019, to discuss the need for an evaluation. (B-1).
16. The PPT meeting was held on May 7, 2019, and it was decided that an evaluation of the Student should be performed to include testing in the areas of cognitive, social-emotional, behavioral, attention, executive functioning, and academic achievement (in the areas of reading, writing and math). (B-1).
17. The Parents refused to sign the notice and consent form to allow an evaluation to be conducted. (B-1).
18. The Parents' Attorney again requested an IEE, which the Board denied because "the team is recommending a comprehensive special education evaluation.” (B-1).

CONCLUSIONS OF LAW AND DISCUSSION:

A. Subject Matter Jurisdiction.

1. The Parents have filed a motion to dismiss the Board's petition alleging that there is no subject matter jurisdiction based on the Board's failure to timely file its request for a Due Process hearing.

2. Under 34 CFR § 300.502(b)(2), if a parent requests an IEE at public expense, the agency must, without unnecessary delay, either:
 - (i) initiate a hearing under 34 CFR § 300.507 to show that its evaluation is appropriate; or
 - (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 CFR §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.
3. In the present matter, the Parents requested an IEE on April 5, 2019, (Finding of Fact 15); On April 25, 2019, the Board scheduled a PPT for May 7, 2019 to discuss the need for an initial evaluation of the Student. (Findings of Fact 16); and the Board filed its request for a Due Process Hearing on June 12, 2019, (*See* HO-1).
4. “Although unnecessary delay is not defined by the IDEA, some delay may be necessary to allow the school district to thoughtfully consider its options. As best practice, a school district should provide a written response to a parent’s request to an IEE at public expense ... **within 10 school days from when the request is made during the academic school year and 14 calendar days from when the request is made in between school years.**” *Guidelines Regarding IEEs at Public Expense and In-School Observations*, p. 4, Connecticut Bureau of Education, March 28, 2018. (Emphasis in the original).
5. The consensus of courts has been to find an unexplained ***three-month*** delay unreasonable, when faced with the question of unnecessary delay, *see Pajaro Unified Sch. Dist. V. J.S.*, 47 IDELR 12, 2006 U.S. Dist. LEXIS 90840 (N.D. Cal. 2006), *Los Angeles Unified Sch. Dist.*, 111 LRP 48178 (SEA 2011).
6. Here, the Board waited 20 days to respond to the Parents request for an IEE before scheduling the second PPT, waited until May 7, 2019 to conduct the PPT, and waited to file its due process request until June 12, 2019.
7. While these time frames are not within the “best practice” guidelines established by the Connecticut Board of Education, they do not necessarily deprive the Hearing Officer of jurisdiction to hear the matter, and likewise, by themselves, do not entitle the Parents to an IEE at public expense.
8. The motion to dismiss is therefore denied.

B. The Board’s Connors ADHD Index was an Incomplete Evaluation.

9. The Conners AI administered by Ms. Siegrist has been identified by the Board as a screening; but I do not find this label persuasive. “Screening,” as used in 34 CFR § 300.302, and § 614A)(1)(E) of the Act, refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. Ms. Parisi testified that the school used the Conners AI to determine whether there was a basis for the Mother’s concerns that the Student should be evaluated, and then to provide instructional support and accommodation. (Finding of Fact 11). Moreover, screening is used with groups of children. Here, Ms. Siegrist’s testing was administered selectively—shortly after the Mother referred her daughter for evaluation for suspected disability. *See Letter to Black*, 16 IDELR 1400 (OSEP 1990). Finally, it is significant that while Ms. Siegrist testified that the Conners AI was used as a screener, her report (P-6) identified the Conners AI as an evaluation but then indicates that it was not being used for purposes of evaluation.
10. While the January 9, 2019 PPT recommended that the Student should not be found eligible for Special Education services, this recommendation was made without a formal comprehensive educational evaluation having been completed prior to that recommendation.
11. The selective administration of the Conners AI to the Student is the key to determining the application of the IDEA’s procedural protections in this matter. According to the 9th Circuit, any individually administered testing triggers the IDEA’s procedural safeguards regardless of whether the district believes or has reason to believe a student’s lack of satisfactory academic progress may be related to a disability. *See Pasatiempo v. Aizawa*, 25 IDELR 64 (9th Cir. 1996).
12. By initiating the Conners AI test selectively to the Student the Board was required to conduct a complete evaluation in a timely manner. *See Letter to Torres*, 53 IDELR 333 (OSERS 2009). This is because screening may not be used to delay an evaluation for special education and related services. An evaluation must be completed regardless of whether the LEA is also conducting screening, and the Board must implement the evaluation procedures set out in 34 CFR 300.301 through 34 CFR 300.311. *Letter to Torres*, 53 IDELR 333 (OSERS 2009).
13. Because the Board did not conduct a complete evaluation of the Student in a timely manner as required by the IDEA’s procedural protections, the Parents are entitled to an Independent Educational Evaluation at public expense as a matter of equity.

C. The Board Shall also proceed with the Evaluation proposed at the May 7, 2019 PPT Meeting Despite the Absence of Parental Consent.

14. The IDEA is a sweeping federal act designed to open the door of public education to students with disabilities by requiring school systems to offer disabled students a free appropriate public education, (“FAPE”), that emphasizes special education and related

services designed to meet their unique needs. 20 USC § 1400(d)(1); CGS. § 10-76h; *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982).

15. The IDEA demands that public school systems actively and systematically seek out, identify, locate, and evaluate children suspected of having disabilities who may be in need of special education and related services. 20 USC § 1412(a)(3)(A); 34 CFR § 300.111; Regulations of Connecticut State Agencies, (“RCSA”), § 10-76d-6(a).
16. When a student is identified as potentially needing special education and related services, the school system must conduct an initial evaluation to confirm the child’s eligibility for special education as well as to provide the information necessary to develop and implement an appropriate individual program of instruction and services for the Student, or Individualized Education Program, (“IEP”). 20 USC § 1414(a)(1)(A); 34 CFR § 300.301; RCSA § 76d-9(a).
17. An evaluation under the IDEA serves the twin purposes of identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and helping PPT teams identify the special education and related services because of an IDEA-eligible disability, and helping PPT teams identify the special education and related services the student requires. 34 CFR § 300.301(c)(2); RCSA § 10-76a-1(6).
18. The Board must make reasonable efforts to obtain informed consent from the parent before conducting an initial evaluation. 20 USC § 1414(a)(1)(D); 34 CFR § 300.300(a)(1).
19. If the parent does not consent or fails to respond to a request for consent, the district may (but is not required to) use the IDEA’s mediation or due process procedures to demonstrate the need for an evaluation. 20 USC § 1414(a)(1)(D)(ii)(1); 34 CFR § 300.300(a)(3)(i); *Schaffer v. Weast*, 546 U.S. 49, 52-53 (2005)(school districts may seek a due process hearing “if parents refuse to allow their child to be evaluated”); *Monterey Peninsula Unified Sch. Dist.*, 114 LRP 532229 (SEA CA 11/06/14)(evaluation may be ordered despite lack of parental consent where necessary to confirm eligibility and/or develop a program).
20. At the hearing, the party filing the request for due process has the burden of persuasion by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 56-62 (2005). Here, the Board of Education, as the complaining party, bears the burden to prove that its proposed evaluation is needed.
21. In this case, the Student began to display in March, 2019 significant behavioral issues in school, and struggled with completing assignments. (Finding of Fact No.s 12, and 13).
22. The Board fully demonstrated that the evaluation it proposes is necessary and appropriate to determine if the Student requires special education and related services, as well as to develop an appropriate program of instruction for her. The parents have not presented

any cogent objection to the proposed evaluation or reason that it should not take place other than they desire a separate publically funded Independent Educational Evaluation.

23. While it has been determined as a matter of equity that the Parents are entitled to a publically funded IEE, the Board is entitled to complete its own educational evaluation.

FINAL DECISION AND ORDER

1. The Board's Connors A1 Rating Scale testing of the Student was a part of an uncompleted initial educational evaluation. The procedural protections of the IDEA require that the LEA conduct a complete initial educational evaluation in a timely manner which was not done by the Board.
2. Therefore, the Parents are equitably entitled to an independent educational evaluation at public expense.
3. The Board, however, shall also be allowed to conduct an educational evaluation of the Student in the areas of cognitive, social-emotional, behavioral, attention, executive functioning, and academic achievement in the area of reading, writing, and math.
4. The Board is directed to have its designated evaluator coordinate testing with the independent evaluator selected by the Parents.