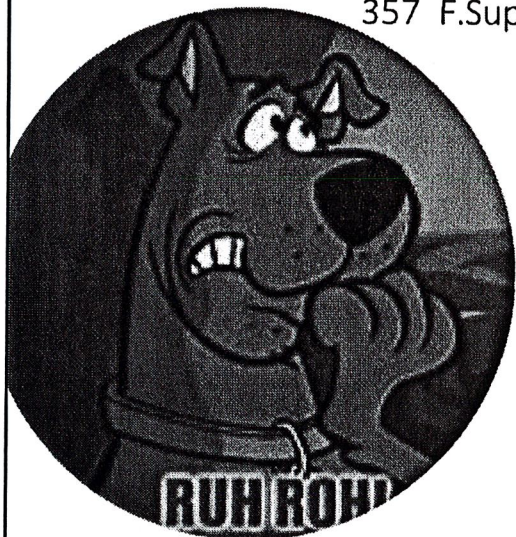


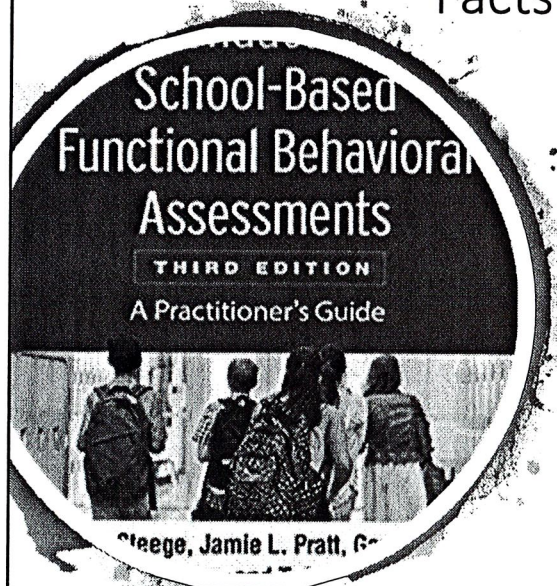
***D.S. v. Trumbull Board of Education,***  
 357 F.Supp.3d 166 (D. Conn. 2019), *on appeal* (2nd Cir.)



- IEE at public expense for multiple assessment areas, when most recent evaluation by district is only in one area?

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**Facts...**



- D.S. is sixteen-year old student with multiple disabilities in a district therapeutic day program.
- District conducted Functional Behavioral Assessments (FBAs) to identify the triggers for behaviors including punching, kicking and hitting property.
- Parents agreed to evaluation, but requested IEE for more testing in seven separate areas.
- The district agreed to evaluate additional assessments in house, but parents refused consent.
- Eventually, district agreed to pay for one IEE – an FBA.
- Both the parents and the district requested a due process hearing.

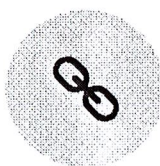
NSBA-COSA 2019 Law Practice Seminar NSBA legal update



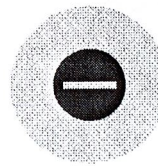
H.O. granted the parents' request for a behavioral and psychosocial evaluation, because district's FBA was insufficient re: behavior causes.



But H.O. denied request for IEE in the multiple additional areas outside scope of what FBA measures.



H.O. also found "there should be a connection between the type of IEE requested and the evaluation that has been conducted."



Thus district's FBA evaluation does not open the door to request for evaluations in multiple unrelated.

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FEDERAL DISTRICT COURT AFFIRMED.



THE DISTRICT COURT AGREED WITH H.O. > TRIGGER FOR PAID IEE IS PARENTAL DISAGREEMENT WITH EXANT EVALUATION.



LATEST TRIENNIAL EVALUATION IS WHAT COUNTS (2017 NOT 2014).



PARENTS APPEALED TO THE U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT.

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NSBA brief  
written by  
the  
Connecticut  
Association  
of Boards of  
Education  
and joined  
by NYSSBA.

- The brief argues:
- Collaborative framework of IDEA anticipates parent participation in the district's evaluation.
- Filing for multi-layered evaluation vitiates collaborative intent of law when time has passed for disagreeing with comprehensive triennial evaluation.
- Refusal to consent to triennial evaluation amounts to litigation position.
- Statute foresees collaboration with parental right to seek a second opinion at the time.



CONNECTICUT ASSOCIATION OF BOARDS OF EDUCATION

The Council of Parent Attorneys and Advocates (COPAA) filed an amicus brief in support of parents.

- COPPA asserts both a process and a policy argument:
  - If affirmed, district court decision will destroy meaningful right to IEE in the Third Circuit, because district alone decide with IEE request is "valid."
  - Parents need access to IEEs at public expense to be able to participate meaningfully in the development of special education plans for their children.





NSBA joined the  
amicus brief  
written and filed.

- brief is designed to counter COPPA arguments:
  - Explains the importance of district evaluations in the collaborative process envisioned by the IDEA.
  - Parents should not be able to vitiate collaborative intent of IDEA by denying consent for the district's evaluation, then demanding their own private evaluation at public expense.
  - IDEA does not provide for a publicly funded IEE when there is no school district evaluation with which the parent "disagrees."