

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Student v. New Milford Board of Education

Appearing on behalf of the Parents: Attorney Deborah G. Stevenson  
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Southbury, Connecticut 06488

Appearing on behalf of the Board: Attorney Lawrence J. Campana  
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Appearing before: Attorney Patricia M. Strong, Hearing Officer

**FINAL DECISION AND ORDER**

**BACKGROUND AND INTERIM ORDERS:**

1. The Parent requested this hearing on January 31, 2001. This Hearing Officer was assigned to the case on February 1. A prehearing conference was thereafter held on February 12, 2001. A hearing date was scheduled for March 1, 2001.
2. On February 22, 2001, the Board filed its list of witnesses and 84 exhibits. The Parent filed her witness list and 28 exhibits on February 27. Both parties later filed supplemental exhibits, one for the Board and one for the Parent. The Parent offered three other exhibits and tape recordings of two meetings, one a medical meeting on the student's 504 medical plan, which Parent wanted to offer in lieu of medical testimony from the student's physician, and one from a Planning and Placement Team (PPT) meeting, which were not admitted into evidence. The Hearing Officer filed three exhibits, one the request for due process, two the revised list of issues submitted at the first day of hearing and three a motion dated March 12 captioned "Plaintiff's Motion For Hearing Officer to Compel the Respondent to Provide Plaintiff with Grades for Work Completed During Homebound Instruction."
3. On March 1, the hearing commenced and was completed on March 12, 2001. The Parent was represented by counsel at the hearing. The Hearing Officer conducted a lengthy colloquy with counsel to attempt to narrow the issues and ascertain what claims the Parent was attempting to litigate. The issues became more expansive, instead of narrower. The Hearing Officer then determined that two issues, as set forth below, would be considered. The Parent and her attorney were advised that there were separate administrative processes available for redress of complaints regarding

medical accommodation plans under Section 504 of the Rehabilitation Act of 1973 and of strictly procedural violations of IDEA and the Connecticut statutes and regulations governing special education. They were advised to present these issues in those forums since the Hearing Officer did not have jurisdiction under Conn. Gen. Stats., Section 10-76h to decide them. Testimony was then heard from the Parent on March 1.

4. The Parent's attorney filed two motions, one dated March 5 captioned "Plaintiff's Motion to Clarify Decision of Hearing Officer Regarding Issues to be Determined at Due Process Hearing," and the second dated March 12, referenced above in paragraph 2 as Hearing Officer Exhibit 3. Both motions sought to inject even more issues into the hearing, including the initial classification of the student in March 1999 and requested to remove the issue of whether the Parent had consented or should consent to psycho-educational testing of the student. Both motions were denied at the beginning of the March 12 hearing.
5. The Parent was permitted to add Exhibit 30, the student's report card. Three others, including a March 9, 2001 letter from the student's physician, a four-page document from New Milford Hospital regarding medical reports of the radiology department from 1994, 1998 and 2001, and a two-page excerpt from a medical text entitled Clinical Pediatric Neurology were not admitted into evidence based on the objection from the Board and the absence of any medical testimony to interpret them or any opportunity for cross-examination.
6. The cross-examination of the Parent was then continued and her testimony was completed at 1:00 pm on March 12. The Parent's request to call Dr. Jean Ann Paddyfote, Director of Pupil Personnel Services, was denied since she was not present at any of the PPT's in question and the testimony would only pertain to matters not within the jurisdiction of the Hearing Officer. The Parent then rested her case after making numerous objections for the record.
7. The Board presented oral testimony from John Marsicano, School Psychologist assigned to the Northville School, the elementary school where the student should attend, and Thomas Atticks, Principal of that school.
8. The parties requested and were granted until two weeks following the availability of the hearing transcripts, which was determined to be April 24, in which to file simultaneous briefs. Both parties filed timely briefs. On May 1, the Board filed a rebuttal brief. On May 8, 2001, the Parent's attorney moved to strike the Board's rebuttal brief, claiming that the Hearing Officer ordered that rebuttal briefs would not be permitted. The Parent's attorney also filed a rebuttal brief in the event that the Hearing Officer allowed the Board's brief. The Board's attorney filed an objection to the late filing of the Parent's rebuttal brief, claiming that the Hearing Officer allowed one week following the exchange of simultaneous briefs on April 24 for the parties to file rebuttal briefs. In fact, the Hearing Officer sent a letter to both parties dated April 2 regarding the briefing schedule. In the letter, the parties were given until April 24 to

file simultaneous briefs and, it was further stated that reply briefs “would not be necessary.” Since both sides have taken the time and effort to provide them, they were both reviewed and considered. The parties have had a full and ample opportunity to present all their evidence, both written and oral testimony, as well as legal arguments on the issues which are within the jurisdiction of Section 10-76h.

**ISSUES:**

1. Was the student properly exited from special education in April 2000 with the parent’s consent?
2. Is a psycho-educational evaluation of the student required for purposes of determining his current eligibility for special education services and is parental consent required?

**FINDINGS OF FACT:**

1. The student is currently 8 years of age (DOB 6/17/92). His current educational placement is in regular education in the third grade at Northville Elementary School. The student had 9 absences in September 2000 and has not attended school since September 20 in the 2000-2001 school year. (Board Exhibits 53 and 66 and Testimony of Parent (mother))
2. The student was diagnosed at age two with a condition called external hydrocephalus, a condition in which fluid surrounds the area outside the skull. (Parent Exhibit 1; Board Exhibits 4 and 12). The condition may have been present since the age of four-to-five months. (Board Exhibit 4 at 1). The student briefly participated in speech therapy services in the Birth-to-Three program as a two-year old, but was discontinued after he met the goals and was found to be within age appropriate levels. (Board Exhibits 5 and 6). The student did not qualify for the Excel Program, the district’s preschool special education program. (Board Exhibit 10)
3. The student has been able to attend regular education classes since kindergarten. In November 1998, the Parent requested a referral to special education services because of a perceived short-term memory and perhaps auditory processing problem. (Board Exhibit 13). On December 9, 1998, a PPT meeting was held and a psycho-educational evaluation was recommended. (Parent Exhibit 1 at 1-3). The Parent agreed to the evaluation. Id. at 4; (Board Exhibit 16). In March 1999, School Psychologist John Marsicano, completed a report of his findings that the student was in the average range of general intelligence with significant scatter among specific areas of cognition. (Parent Exhibit 2 at 3-6; Board Exhibit 18).
4. The student was found eligible for special education services on March 2, 1999 based on a classification of Other Health Impaired. (Parent Exhibit 3)

5. On April 28, 2000, a PPT was held to discuss the student's progress for the 1999-00 school year and to develop an IEP for the 2000-01 school year. At that time, the PPT agreed that the student no longer qualified for special education services based on his educational performance and evaluation results. (Parent Exhibit 5 at 2; Board Exhibit 29 at 2)
6. Both the mother and her husband were present at the April 28, 2000 PPT. The parents agreed to have the student evaluated for Section 504 eligibility based on the diagnosis of his physician of external hydrocephalus, asthma and life-threatening allergies. The Section 504 decision was made on April 28, 2000. The parents agreed to the change from special education to a Section 504 student accommodation plan. (Parent Exhibit 5 at 4-9; Board Exhibits 30-35)
7. At that time, the student had mastered all of the goals on his March 1999 IEP. (Parent Exhibit 4 at 2-3; Board Exhibit 36)
8. Standardized tests showed that the student was performing at grade level in all academic areas. (Parent Exhibit 5 at 7; Board Exhibit 33)
9. The student was determined eligible for a 504 accommodation plan because frequent illnesses resulted in extended absences from school. (Parent Exhibit 5 at 4; Board Exhibit 34 at 1)
10. In the 1999-2000 school year, the student was absent for 55 days. His classroom teacher, Mrs. Baldi, provided homebound tutoring for the student in June 2000 after the close of the school year. (Board Exhibit 37)
11. On September 7, 2000, the mother signed a statement giving the Board's Director of Pupil Personnel, Dr. Jean Paddyfote, permission to speak with the student's physician. (Board Exhibit 38). The following day, a medical planning meeting was held at the student's school, which was attended by the mother, her husband, the student's pediatrician, the school principal, assistant principal, school nurse, classroom teacher and Dr. Paddyfote. An individualized emergency medical plan was formulated for the student. (Board Exhibit 39). The plan was later approved in writing by the pediatrician. (Parent Exhibit 12 at 8-10; Board Exhibit 56)
12. The day after that, on September 9, 2000, the mother wrote a letter to the school principal and requested a PPT meeting to determine the student's eligibility for special education as OHI. She also requested that she be hired as the aide for her son if the Board was unable to get one, a new teacher for him, and several other requests. (Parent Exhibit 7; Board Exhibit 40)
13. The mother wrote a second letter with the same date in which she stated that she would not send her son to school until she was satisfied that various requests and demands were met. (Parent Exhibit 6 at 7-8; Board Exhibit 41)

14. On September 11, 2000, the student's teacher was changed, the mother signed a request for minutes of the 504 meeting, and a PPT meeting was scheduled for September 20, 2000. (Board Exhibits 41 at 1, 43-45)
15. The student attended school on September 14 and the mother wrote a note of appreciation to the school principal. (Board Exhibit 48)
16. At the September 20 PPT meeting, the husband signed a consent to evaluate the student. (Parent Exhibit 9 at 5; Board Exhibit 49)
17. Present at the meeting were the mother, husband, the principal, assistant principal, regular education teacher, special education teacher, and school psychologist. It was explained that an evaluation was needed to determine eligibility. There was no disagreement indicated or action refused by the PPT indicated in the minutes. (Parent Exhibit 9 at 2-4; Board Exhibit 50)
18. Nevertheless, the mother filed a due process request with the State Department of Education that same day contending that the medical issues for her son had not been addressed and that he should have been put back into special education immediately. (Parent Exhibit 10 at 2-3; Board Exhibit 51). The request was assigned to this hearing officer and was withdrawn by the mother via a letter to the Board's attorney on October 6, 2000. (Parent Exhibit 10 at 5-6; Board Exhibit 60)
19. The school principal wrote a letter to the mother on October 10, 2000 in which he stated that the evaluation recommended by the September 20 PPT needed to be done to determine eligibility for special education, that there was a 504 medical plan in place from September 8, which was approved by the student's pediatrician, that there was a detailed discussion of the medical plan on September 20 following the PPT meeting, that a tutor had been sent to the student's home and that the school social worker would contact the mother regarding the student's not attending school. (Parent Exhibit 12 at 12; Board Exhibit 61)
20. There were numerous attempts by school staff in October to schedule psycho-educational testing and a 504 medical meeting. (Board Exhibits 62 and 63). The parent did not comply with these requests. Instead she began to request an independent evaluation to be conducted by personnel of her choice at the expense of the Board. Letter from mother to principal dated November 4, 2000 (Board Exhibit 65).
21. On November 6, 2000, the school social worker filed a truancy petition with the State of Connecticut Department of Children and Families based on the fact that the student had been absent from school for 37 of the 42 school days as of November 6 and that the mother refused to send him to school until there was a medical plan in place that she approved. She had also refused to bring the student to the school for educational testing, but did bring him for school pictures and a Halloween party. (Board Exhibit 66)

22. In November, December and January, the parties exchanged a series of letters in which each accused the other of misrepresenting the facts. (Parent Exhibits 16, 17 at 3-4, 18-20, 22 at 2, 23 at 1, and 25 at 1; Board Exhibits 67-74). In January 2001, the mother appeared to agree to psycho-educational testing if it was done by the same personnel who did the original testing in 1999. (Board Exhibit 73). The Board personnel made several attempts to schedule testing in February 2001, but nothing was agreed to. (Board Exhibit 77-79)
23. More correspondence followed in February 2001 regarding the specific personnel who mother agreed could evaluate the student. (Parent Exhibit 25 at 2-5; Board Exhibits 80, 81 and 83). The Board provided five hours per week of homebound instruction from October 2000 through February 2001 "as a courtesy" but did not agree the student met the medical criteria for homebound instruction. (Board Exhibit 82)
24. At the hearing on March 12, Mr. Marsicano, the school psychologist, testified that some of testing had been done, but that there were additional tests needed. Although the Parent's attorney asserts in her reply brief that the remaining tests would be completed on May 8, there was no indication at the hearing dates in March that the evaluation issue was moot. The Hearing Officer, therefore, finds counsel's assertion that a future event would occur insufficient to render the issue moot.
25. When questioned by the Hearing Officer about why she signed the consent form in September 2000, the mother stated that the parental consent form (Board Exhibit 49) did not have her signature, but rather her husband's. When questioned further, she testified that her husband was not the father of the student and was not authorized to sign. The Board never had any reason to suspect that the mother's husband was not the student's father or that his signature was not valid until this testimony.
26. The mother's conduct has thwarted the ability of the Board to evaluate the student.

### **CONCLUSIONS OF LAW:**

1. The student was properly exited from special education services in April 2000 because he met the exit criteria in his March 1999 IEP and the testing in March 2000 indicated he was at grade level in all academic areas. Further, the Parents consented to this. The mother failed to show any circumstances during the April 28, 2000 PPT meeting which in any manner showed her disagreement with the student's exiting from special education and transfer to a 504 medical accommodation plan. While parents have the right to revoke consent at any time, such revocation is not retroactive. CFR Section 300.500(b)(1)(iii). Once the student was out of special education, the Parent's request to return him to special education in September 2000 operated as a request for an eligibility determination.
2. The September 20, 2000 PPT's recommendation for an evaluation was appropriate. The Board is obligated to evaluate a student for all suspected areas of disability. 34 C.F.R. Sections 300.320 and 532(g). The Board is, however, entitled to an evaluation

to be performed by qualified professionals who are satisfactory to school officials. *Dubois v. Conn. State Board of Education*, 727 F.2d 44, 48 (2d Cir. 1984).

3. The parent is entitled to have an independent evaluation done at any time, but not at public expense. The Regulations of Conn. State Agencies, which govern independent educational evaluations, provide in Section 10-76d-9(c)(2) in relevant part: "Parents have the right to an independent evaluation at public expense if the parents disagree with an evaluation obtained by the board of education. . . ." Where, as here, the Board has obtained no evaluation of the student, the parent has no right to an independent evaluation at public expense. See also the Regulations implementing the IDEA set forth in CFR Section 300.502 regarding independent educational evaluations which provides in relevant part: "(b)(2) If a parent requests an independent education evaluation at public expense, the public agency must, without unnecessary delay, either—(i) Initiate a hearing under Section 300.507 to show that its evaluation is appropriate . . . ."
4. In order to qualify for special education services, the student must have a disability that "adversely affects a child's educational performance." CFR Section 300.7(c)(9). While it is not disputed that this student has external hydrocephalus, asthma and life-threatening allergies, that does not automatically qualify the student for special education services.
5. A Hearing Officer has the statutory authority to order a psycho-educational evaluation in cases, such as this, where consent is withheld. Conn. Gen. Stats., Section 10-76h(d)(1) provides in relevant part: "In the case where a Parent . . . has refused consent for evaluation or placement in special education, the Hearing Officer or board may order special education evaluation or placement without the consent of such Parent. . . ."

#### **FINAL DECISION AND ORDER:**

The Hearing Officer finds the issues in favor of the Board. The parents shall cooperate with the Board by making the student available to complete any necessary evaluations so that a determination can be made by the PPT as to whether the student is eligible for special education services. If the student is determined ineligible, the parents will have the right to exercise due process at that time. The Board may determine the personnel to perform the necessary evaluations, so long as they are qualified. There is no determination of rights under the 504 medical accommodation plan.