

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Hartford Board of Education v. Student

Appearing on behalf of the Board: Attorney Ann Bird
Assistant Corporation Counsel
City of Hartford
550 Main Street
Hartford, CT 06103

Appearing on behalf of the Parents: The Parents proceeded *pro se*.

Appearing before: Attorney Mary Elizabeth Oppenheim,
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Student shall be evaluated, which evaluation shall include a psychiatric evaluation, to determine whether she is eligible for special education and related services.
2. Whether the Student should be in a diagnostic placement as part of this evaluation.

PROCEDURAL HISTORY:

The Board requested this hearing on July 31, 2002. The Board notified the State Department of Education that the Parents required a Vietnamese interpreter, as the Parents' dominant language is Vietnamese. At the interpreter's suggestion, the prehearing conference was held at the Board offices on August 13, rather than as a teleconference, to better facilitate the translation of the proceedings. The Mother attended the prehearing, and the interpreter translated the prehearing discussions, including the issues and the scheduled hearing dates. The Mother had no objection to the scheduled hearing dates, and the interpreter confirmed that the Mother was aware of the scheduled hearing dates.

The hearing was held on August 26 and August 28. The Parents and the Student did not attend the hearing on either date. At both hearing dates, the interpreter attempted to

contact the Parents prior to and after the hearing proceeding, and made numerous attempts on the days prior to the hearing dates to confirm that the hearing would proceed. While the interpreter had previously contacted the Parents by telephone at their home, the Parents did not answer the phone when contacted by the interpreter about their failure to appear at the hearing.

The Board's witnesses were Maura Buckley, head teacher at the Board high school; James Salafia, school psychologist; Alan Paluck, the Board's coordinator of special education.

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)

SUMMARY:

Over the course of an entire school year, the school-based members of the PPT attempted to work with the Parents to obtain a psychiatric evaluation, or consent to one, as well as a diagnostic placement for the Student. The Student's academic performance has deteriorated, and she has been exhibiting atypical behaviors, tics and extreme anxiety. While the school-based members of the PPT agree that the Student should be identified as having a Serious Emotional Disturbance, more information is necessary through a psychiatric evaluation and diagnostic placement to evaluate the Student and draft an Individualized Educational Program. The Parents have not consented to the psychiatric evaluation and diagnostic placement.

FINDINGS OF FACT:

1. The Student is 15 years old, and currently in her second year at the Board high school. The Parents' dominant language is Vietnamese, although the Student is fluent in English. [Testimony Ms. Buckley, Exhibits B-2, B-4, B-5, B-6, B-7, B-8] At every PPT meeting, the Board provided an interpreter, as the Parents' dominant language is Vietnamese. [Testimony Ms. Buckley]
2. In June 22, 2001, the Planning and Placement Team [hereinafter PPT] recommended that the Student be evaluated as the Student was exhibiting a significant deterioration in behavior and reality-based thought process, and the Student had had a rapid decline in socialization, peer relations and academic achievement. [Exhibit B-2]
3. In the evaluation, the school psychologist noted that the Student was experiencing a high level of anxiety, and noted that the staff reported that the Student evidences facial tics and repetitive behaviors. [Testimony James Salafia, Exhibit B-3] The school psychologist recommended that a psychiatrist evaluate the Student after his initial evaluation due to the concerns that the Student was very anxious, exhibiting tics, acting out inappropriately and appearing suspicious of others. The school psychologist recommended the diagnostic placement in a therapeutic setting as the

Student is faced with many challenges, is under great stress, her needs are not being met, and she may present a danger to herself. In light of the Student's presentation, the school psychologist indicated that he must defer to a psychiatrist for any recommendations for the Student. [Testimony Mr. Salafia]

4. At the PPT meeting of November 28, 2001, the psychological report was considered. The PPT members noted that the Student was exhibiting inappropriate behaviors, which were noted on the Behavior Rating Scales. At the PPT, the school social worker noted that the Student appeared anxious and paranoid. The PPT did not pursue an identification for the Student, as the Team would gather additional information on the Student's academic progress before a determination of eligibility. At the November 2001 PPT, it was agreed that the Student would pursue in-school counseling. [Testimony Maura Buckley, Exhibit B-4]
5. In January 2002, the PPT reconvened and the school-based members of the team agreed that the Student should be identified as having a Serious Emotional Disturbance. The Mother disagreed with the identification and placement of the Student. At this PPT, it was noted that the Student's behavior continued to deteriorate, and the Mother indicated that she would obtain outside counseling for the Student. [Testimony Ms. Buckley, Exhibit B-5]
6. In April 2002, the PPT again met, and the Mother agreed to have the Student evaluated by a psychiatrist through Asian Family Services. [Testimony Ms. Buckley, Exhibit B-6] At this time, incidents of the Student's inappropriate behavior continued, as well as the Student's difficulties in peer socialization. [Testimony Ms. Buckley]
7. While Asian Family Services volunteered at this time to obtain psychiatric services for the Student, the Parents did not agree to the services. [Testimony Mr. Salafia]
8. The PPT reconvened on June 5, 2002. At this time, the Parent indicated that she had had the Student evaluated at Community Health Services ["CHS"], and consented to the Board contacting CHS to obtain information on this evaluation. [Testimony Ms. Buckley, Exhibit B-7] When the Board contacted CHS, it was reported that the Student was merely given an intake interview by a nurse practitioner that recommended that the Student be evaluated by a psychiatrist. That evaluation was not completed. [Testimony Ms. Buckley]
9. The Student's academic performance deteriorated in the 2001-2002 school year. She only obtained 2 credits for the academic year, so she will repeat her freshman year during the 2002-2003 school year. [Testimony Ms. Buckley]
10. The concerns for the Student's behavior continued throughout the 2001-2002 school year. The head teacher was concerned about the Student's safety as the Student is very influenced by peers, and could put herself in jeopardy if asked by someone to do

so. The Student's behavior was atypical, characterized as anxious and paranoid. [Testimony Ms. Buckley]

11. On June 12, 2002, the PPT met, and the school-based members recommended that the Student be in a diagnostic placement so that the Student's educational needs can be appropriately evaluated, and that a psychiatrist should evaluate the Student. The Parents did not consent to the diagnostic placement and the psychiatric evaluation. [Testimony Ms. Buckley, Exhibit B-8] The Parents also did not have a psychiatrist evaluate the Student by this PPT meeting, nor thereafter. [Testimony Ms. Buckley]
12. The school psychologist has been unable to make a clear diagnosis of the Student, and assist in the drafting of an appropriate individualized educational program without a comprehensive psychiatric evaluation. Nevertheless, the school psychologist is certain that the Student needs comprehensive broad-based support for her educational program. [Testimony Mr. Salafia] The head teacher shared the school psychologist's concern that the Student must have further evaluation to determine her educational needs. [Testimony Ms. Buckley]
13. The coordinator of special education concurs that the Board requires a diagnostic placement for the Student in a small intensive instructional setting with a therapeutic component, with the staff available to observe and evaluate the Student. [Testimony Alan Paluck] The Board requested a diagnostic placement at Grace Webb School through the Institute of Living, and, in the alternative, at Woodstock School in West Hartford, or the Wheeler Clinic in Plainville. [Testimony Alan Paluck]

CONCLUSIONS OF LAW:

1. The Board is seeking a psychiatric evaluation of the Student to determine eligibility and an appropriate program for the Student. In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted. Conn. Agencies Regs. Sec. 10-76h-9(a) The evaluation study shall include reports concerning the child's educational progress, structured observation and such psychological, medical, developmental and social evaluations as may be appropriate in determining the nature and scope of the child's exceptionality. Conn. Agencies Regs. Sec. 10-76-9(a)
2. It is the obligation of the PPT to review existing assessment data regarding a child and to determine whether additional information is necessary in order to program for the child. Initially the PPT reviews existing evaluation data and identifies:
 - what additional data, if any, are needed to determine –
 - (i) Whether the child has a particular category of disability, as described in Sec. 300.7, or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
 - (ii) The present levels of performance and educational needs of the child;

- (iii) Whether the child needs special education and related services, or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

34 C.F.R. Sec. 300.533(a)

3. In this case, the Student's presentation and demeanor have created a challenge for the members of the PPT to address successfully, as it is unclear whether the Student's educational problems are due to a psychiatric disorder, and, if so, how to appropriately draft an IEP for the Student. Additional assessment information is needed to make this determination.
4. The Parents have refused to consent to a psychiatric evaluation. The Board is entitled to the requested evaluation in order to fulfill the need to have current assessment data to ascertain the child's disability and level of functioning pursuant to 34 C.F.R. Section 300.533(a)(2)
5. In the absence of parental consent for evaluations, hearing officers may order special education evaluations without the consent of the parent. Conn. General Statutes Sec. 10-76h(d)(1) The federal regulations specifically indicate that when the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the Board may continue to pursue the evaluations through the due process procedures. 34 C.F.R. Sec. 300.505(b) The Board has appropriately brought such a request, and the evidence supports that the psychiatric evaluation is necessary so that the evaluation of the Student is sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F. R. Sec. 300.532(h) The psychiatric evaluations shall be completed.
6. The Board is also seeking a diagnostic placement of the Student in accordance with Conn. Agencies Regs. Sec. 10-76d-14(b). The Parents have refused consent to the diagnostic placement. The purpose of the diagnostic placement is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation study is either inconclusive or the data insufficient to determine the child's individualized education program. Conn. Agencies Regs. Sec. 10-76h-14(b) The diagnostic placement is a method of evaluation, not educational placement. *See, e.g., West Hartford Board of Education, OCR 01-86-1016, 352 IDELR 300 (1986)* Therefore, in the absence of parental consent for the diagnostic placement, hearing officers may order the diagnostic placement without the consent of the parent, as it is a method of evaluation. Conn. General Statutes Sec. 10-76h(d)(1)

7. The strong and compelling evidence presented indicate that there are genuine concerns regarding the emotional status of the Student. The school psychologist has indicated the need to assess the Student to determine an appropriate comprehensive broad-based program for her needs. This evaluation should be completed in a small intensive instructional setting with a therapeutic component. The PPT can not fully evaluate and prepare an IEP for the Student without the psychiatric evaluation, completed in the diagnostic placement.

FINAL DECISION AND ORDER:

1. The Board shall be permitted to conduct a psychiatric evaluation of the Student by an appropriately licensed psychiatrist in the State of Connecticut available at the Grace S. Webb School located in Hartford and operated by the Institute of Living.
2. The Board shall be permitted to evaluate the Student through a diagnostic placement at the Grace S. Webb School located in Hartford and operated by the Institute of Living. The diagnostic placement shall not exceed three (3) weeks, and the Board shall convene a PPT weekly to review the Student's diagnostic placement.
3. If space is not available at the Webb School, the Board shall be permitted to conduct a psychiatric evaluation of the Student by an appropriately licensed psychiatrist in the State of Connecticut, and a diagnostic placement of the Student at Saint Francis Care Behavioral Health Education Program at Woodstock School in West Hartford. The diagnostic placement shall not exceed three (3) weeks, and the Board shall convene a PPT weekly to review the Student's diagnostic placement.
4. If space is not available at the Webb School and at the Woodstock School for the evaluation and educational placement, the Board shall be permitted to conduct a psychiatric evaluation of the Student by an appropriately licensed psychiatrist in the State of Connecticut, and a diagnostic placement in a state-approved small intensive instructional setting with a therapeutic component, chosen by the Board after consultation with Asian Family Services. The diagnostic placement shall not exceed three (3) weeks, and the Board shall convene a PPT weekly to review the Student's diagnostic placement.