

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Canterbury Board of Education v. Student

Appearing on behalf of the Student: Mother
 106 Brooklyn Road
 Canterbury, CT 06331

Appearing on behalf of the Board: Attorney Michael P. McKeon
 Sullivan, Schoen, Campana
 & Connon, LLC
 646 Prospect Avenue
 Hartford, CT 06105

Appearing before: Attorney Christine B. Spak, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Whether the Student shall undergo a psychological evaluation before returning her to a public school setting?

SUMMARY:

The request for hearing in this matter came from the Board. The Student was on homebound instruction and none of the three public high schools available in the Student's region would accept her back into school without a psychological evaluation so that proper programming could be decided upon. During the prehearing the school expressed the concern that this is a Student who has significant potential and could be helped with proper placement and programming but that they were not successful in getting cooperation for her evaluation. The matter was assigned to the undersigned Hearing Officer on August 13, 2002 and the prehearing conference was scheduled for August 19, 2002 with a Final Decision Mailing Date of September 26, 2002. The prehearing conference was held as scheduled and a hearing date of September 4, 2002 was set. After the prehearing conference the hearing officer received notice that a law firm would be representing the Board at hearing but no specific attorney was identified. On August 30, 2002 the Hearing Officer was faxed a request for continuance from the

Board which was not received by her until September 3, 2002 due to the holiday weekend and the fact that it was received after business hours on the 30th. The request was not granted and the hearing commenced as schedule with the Board witnesses and representative, their counsel, the mother and Student appearing. The parties were given time to negotiate a settlement and they reported back that they were prepared to present evidence so that an order might issue. The date for mailing of the final decision is September 16, 2002.

FINDINGS OF FACT:

1. The Student was fourteen years old at the time of hearing and her primary identification was learning disabled. (Testimony of Mother, testimony of director)
2. There had been an incident in school involving threatening that resulted in the Student being placed on homebound instruction since March 28, 2002. (Exhibits B-11, B-12)
3. A manifestation determination found that the incident was not a manifestation of her learning disability. (Exhibits B-11, B-12)
4. The PPT agreed that the Student would stay on homebound pending the completion of a psychiatric evaluation. The mother received notice but did not attend, but the Student's adult sister did attend with the Student. (Exhibit B-12)
5. The Board set up an appointment for a psychiatric evaluation on two occasions but when the Board's transportation arrived at the Student's house, the Student was not available. The evaluators are unwilling to continue booking time for evaluations that then are cancelled at the last moment due to unavailability. (Testimony of director)
6. The Student, who has been involved with the courts as a result of the referenced school incident, began attending a program at the Joshua Center in April, part time, and this has continued to the date of the hearing. (Testimony of Mother, testimony of Student)
7. The Mother and Student believe that the Joshua Center already has a psychiatric evaluation but did not have it available at hearing. They testified they are willing to provide it to the Board. (Testimony of Mother, testimony of Student)
8. The Mother and Student are willing to have the student submit to a psychiatric evaluation if one has not already been conducted. (Testimony of Mother, testimony of Student)

9. The student has been on medication for several weeks and both the Student and Mother believe it has been a tremendous help to the Student. (Testimony of Mother, testimony of Student)
10. The student wants to return to Norwich Free Academy as soon as possible, and this is what her Mother wants for her. (Testimony of Mother, testimony of Student)
11. The principal of Norwich Free Academy attended the hearing and agreed that the Student should be returned to Norwich Free Academy as soon as the PPT could convene and review the psychiatric evaluation. (Testimony of the Principal)
12. The Board requested due process and requested an order for a psychiatric evaluation out of concern that an order may be necessary to insure compliance.
13. There is no dispute that the manifestation determination was properly conducted and proper in its conclusion. Record as a whole.

CONCLUSIONS OF LAW:

1. There is no dispute that the Student is entitled to special education and related services as a student identified with a specific learning disability and thereby entitled to receive a free and appropriate public education ("FAPE") pursuant to 20 U.S.C. Section 1400 et. seq., the Individuals with Disabilities Education Act ("IDEA", also "the Act"), 34 C.F.R Section 300.7(a) and Section 10-76a-1(d) of the Regulations of Connecticut State Agencies (RCSA).
2. The Act defines FAPE as special education and related services which:
 - “(A) have been provided at public expense, under public supervision and direction, and without charge;
 - (B) meet the standards of the State educational agency;
 - (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
 - (D) are provided in conformity with the individualized education program required under Sec. 614(d).” 20 U.S.C. Section 1401(8).
3. The Individuals with Disabilities Education Act has specific procedures that must be followed if disciplinary action is taken against a student who is eligible for special education. If a disciplinary action involving a change in placement for more than 10 days is contemplated for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the local educational agency that applies to all children . . . a review shall be conducted of the relationship between the child’s disability and the behavior subject to the disciplinary action. 20 U.S.C. Sec. 1415(k)(4)(A), 34 C.F.R. Sec. 300.519, et seq. Such a review was required in this

matter and the statutes and regulations provide detailed procedures for what constitutes a proper manifestation review. 40 U.S.C. Sec. 1415(k)(4)(C).

4. The disciplinary provisions of the Act also provide protection to a child who has not yet been determined to be eligible for special education and related services, if the local educational agency has knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 40 U.S.C. Sec. 1415(k)(8)(A).
5. In this matter the Mother has not raised any issues regarding the underlying manifestation determination and has appeared at hearing and seems to be aware of the Student's rights. It is therefore concluded that a proper manifestation determination was conducted and the behavior in question was correctly determined to not be related to the Student's learning disability. The PPT then correctly considered whether the Student should have an additional or different identification that might be related to the behavior. Not having enough information to come to a decision on this the PPT properly requested a psychiatric evaluation. Perhaps due to miscommunication the evaluation that the Board tried to initiate was not conducted because the Student was not available at the times the transportation arrived at her home. The Hearing Officer has the authority to order evaluations whether or not a parent or guardian has consented. C.G.S. Section 10-76h-(d)(1). Here, the Mother and Student have both testified that the Student is willing to undergo a psychiatric evaluation and that the psychiatric treatment she has received to date has been a tremendous help to her.

FINAL DECISION AND ORDER:

1. The Student will undergo a psychiatric evaluation as needed to provide the PPT with the information necessary to program for her.
2. As soon as possible after the Board receives the psychiatric evaluation a PPT meeting will be convened with the goal of returning the Student to Norwich Free Academy without undue delay, and not later than one month after the psychiatric evaluation is received by the Board.