

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Southington Board of Education

Appearing on Behalf of the Student: Pro Se

Appearing on Behalf of the Board: Attorney Michael P. McKeon
Sullivan, Schoen & Connon, LLC
646 Prospect Avenue
Hartford, Connecticut 06105-4286

Appearing Before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Whether the Board should be able to override the Student's lack of consent and be permitted to conduct a psychiatric evaluation of the Student?

SUMMARY:

The Student is a nineteen years old young man who has been identified as having a specific learning disability and entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. On May 24, 2006, when the Student was seventeen, he was referred to a Planning and Placement Team ["PPT"] meeting to determine his possible eligibility for special education. At the subsequent May 30, 2006 PPT meeting, the Student's mother consented to the Board conducting evaluations in the cognitive, academic, behavioral and emotional areas. The PPT also recommended that the Student be diagnostically placed in the high school's support study for the remainder of the 2005-2006 school year.

On June 21, 2006, the PPT reconvened, at which time it identified the Student as having a specific learning disability and recommended that he re-take an English course during summer 2006.

On October 19, 2006, the PPT reconvened to determine whether certain, in-school conduct constituted a manifestation of the Student's disability. The Team determined it was a manifestation and recommended both a psychiatric evaluation and weekly monitoring by the school's social worker. The Student having turned eighteen, the

district members of the PPT requested his consent to conduct the psychiatric evaluation, but the Student did not sign it at that time.

The PPT reconvened on November 2, 2006 for the purpose of revisiting the functional behavioral assessment it had completed at the October 19 meeting. The school staff expressed concerns regarding what it perceived to be the Student's increased level of depression, his increased outbursts of anger, and the adverse impact these emotional and behavioral issues were having on his academics. The Student, however, expressly refused to provide consent to the psychiatric evaluation. Additionally, he declined to authorize the Board to release information to either of the two psychiatrists that the PPT had suggested conduct the evaluation.

The findings of fact and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered and vice versa. see SAS Institute, Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp 816 (M.D. Tenn 1985) and Bonnie Ann F. v. Callallen Independent School Board, 835 F.Supp. 340 (S.D. Tex. 1993

PROCEDURAL HISTORY:

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 Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

On December 7, 2006, the school district requested a due process hearing, requesting as relief that the Student be ordered to make himself available for and participate in a psychiatric evaluation. A pre-hearing conference was originally scheduled for January 5, 2007, but the Student was not available to participate. Despite the subsequent efforts of the hearing officer and the Board, the Student declined to participate in a rescheduled pre-hearing conference. The hearing was scheduled for February 1, 2007. It was held at the district's high school in order to facilitate the Student's participation in the hearing. Although the Student was in the high school on February 1, he refused to attend the hearing. Consequently, the hearing proceeded and both testimonial and documentary evidence was adduced by the Board. The Board would file a post hearing brief. The post hearing brief of the Board was received on October 10, 2007.

The mailing of the decision and order was extended by agreement of the parties until November 10, 2007.

STATEMENT OF FACTS:

1. The Student is an 19 year old young man who has been identified as specific learning disability and is entitled to receive a free and appropriate public education (“FAPE”) as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.
2. On February 21, 2007, the assistant principal informed the Student that the due process hearing was to be conducted today. She informed the Student that the hearing would take place at the school. The Student declined to attend. (Testimony of Assistant Principal)
3. On or about May 5, 2006, a referral was made by the school social work to determine if the Student was eligible for special education and related services. The social worker noted that the Student:
 - a. had low self-esteem,
 - b. appeared fatigued, complained of stomach and hunger pains,
 - c. inconsistent school attendance, failing English and had inconsistent and poor grades,
 - d. had an inconsistent living situation, appeared sad and
 - e. expressed feelings of hopelessness regarding school and current life situation.(Board’s Exhibit ¹#3)
4. In order to determine if the Student was eligible for special education and related services, the Parent consented to cognitive, academic, behavioral evaluations. At the May 30, 2006 PPT, the Board agreed to offer the Student a summer session of English and to enroll the Student in a support study group. The PPT would reconvene on June 21, 2006 to determine the status of the evaluations. (B-6)
5. The Student was referred to the school psychologist due to a concern of the Student’s academic, health-related and social/emotional status. In June 2006, the school psychologist conducted a psychological evaluation of the Student. The Student’s cognitive functioning was in the average range. The psychologist found that the Student’s decline tended to indicate significant depressive characteristics. (B-10)
6. On June 21, 2006, the PPT reconvened, at which time it reviewed the evaluation reports and determined that the Student qualified for special education services with a specific learning disability. The Team noted that the Student’s “difficulties with processing oral language and organizing ideas impacts his ability to complete tasks requiring written expression.” The PPT recommended that the Student enroll in summer 2006 Freshman English, that he complete Junior English during the 2006-2007 school year and attend academic support on a daily basis, and that his graduation be moved back until the end of the first semester of

¹ Board’s Exhibits are referred to as “B” followed by the appropriate number.

- the 2007-2008 school year in order to enable him to complete his senior-level English requirements. The Team also developed goals and objectives in the areas of social/behavioral, writing, organization, self-advocacy and transition. (B-11)
7. The Student's first semester of the 2006-2007 school year was marked by disciplinary infractions, including the possession of tobacco, absenteeism and cutting classes. On September 27, 2006, the Student disrupted one of his classes, and when the Assistant Principal arrived at the room, he flipped a desk in the classroom and became extremely belligerent. As a result, he was suspended for ten days, and a PPT meeting was scheduled to conduct a manifestation determination. (B-15 & B-22, Testimony of Assistant Principal)
 8. The PPT meeting was held on October 19, 2006. The Student attended the meeting, and although she was invited, his mother did not attend. At the October 19 meeting, the Team conducted a functional behavioral assessment and drafted a behavioral intervention plan. The Team also determined that the Student's conduct was a manifestation of his disability. The PPT recommended a psychiatric evaluation and weekly monitoring by the social worker. The Student, who was eighteen at the time of the October 19 meeting, did not sign the "Notice and Consent to Conduct a Reevaluation" form. (B-13, B-14 & B-15)
 9. A functional behavioral assessment (FBA) was conducted of the Student. The assessment found that the Student's emotional issues impacted his school work and gave the Student a feeling of inadequacy. The Student resented authority and did not want to be told what to do. This would cause verbal and physical outbursts. A behavioral plan was created for the Student. The plan called for a psychiatric evaluation and counseling with the social worker. (B-15)
 10. The Student continued to engage in misconduct, and on November 2, 2006, the PPT reconvened to review the functional behavioral assessment. At the November 2 meeting, the Team again recommended a psychiatric evaluation. At the meeting, the district members of the PPT provided the Student with a copy of his procedural rights and informed him that the Board would request a due process hearing if he did not provide consent to the psychiatric evaluation. Despite this, the Student refused to consent to the psychiatric evaluation. The Student also declined to authorize the release of information to two different psychiatrists that the Team had recommended conduct the evaluation. (B-17 & B-19)
 11. On December 21, 2006, the Student threatened to physically beat another student and referred to the other student's race in the course of making the threat. He subsequently refused to stay in the main office of the high school and instead returned to his classroom despite being directed not to do so. The high school was required to obtain the assistance of a police officer to remove the Student from the class room. The Student was suspended for 10 days as the result of this incident. There was no manifestation determination for this incident and suspension. (B-22, Testimony of Assistant Principal)

CONCLUSIONS OF LAW:

1. The Student is an 19 year old young man who has been identified as specific learning disability and is entitled to receive a free and appropriate public education (“FAPE”) as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. Under the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§1400 *et seq.* [“IDEA”], school districts are obligated to evaluate and identify students with disabilities who may be in need of special education and related services. 34 C.F.R. §300.111(a)(i). At the same time, the IDEA provides that a school district “must conduct a full and individual initial evaluation . . . before the initial provision of special education and related services to a child with a disability.” 34 C.F.R. §300.301(a). Similarly, a school district “must ensure that a reevaluation of each child with a disability is conducted . . . [i]f the public agency determines that the educational or related services needs . . . of the child warrant a reevaluation; or . . . [i]f the child’s . . . teacher requests a reevaluation.” 34 C.F.R. §300.303(a).
2. The IDEA permits, but does not require, a school district to utilize due process procedures to obtain a psychiatric or other evaluation when the parent or, in the case of a child who has reached the age of majority, the Student refuses to provide consent. In the present case, since the student was more than 18 years old, the right to provide consent to the psychiatric evaluation sought by the Board was the Student’s, not the Parent’s. 34 C.F.R. §§300.300(a)(3) & (c).
3. The Student’s actions and behavior in the school caused the PPT to act on the recommendation and request a psychiatric evaluation. (Findings of Facts # 8 & #10) The Student refused to cooperate with the PPT’s recommendation of the evaluation. (Findings of Facts # 11)
4. The Student has refused to attend the hearing. The hearing was conducted in a site easily accessible for the Student. Notice was given to the Student by the hearing officer and Board personnel spoke to the Student and asked him if he was going to attend the hearing. The Student stated he was not going to attend. (Findings of Facts # 2). The Student has not presented any reason for the Board not to be allowed to conduct a psychiatric evaluation. In order to be able to provide the Student with a proper IEP that will allow him to receive FAPE, it is necessary for the Board to be allowed to conduct a psychiatric evaluation of the Student.

To the extent a procedural claim is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit or there was no rational basis to believe that procedural inadequacies compromised the pupil’s right to an appropriate education.

FINAL DECISION AND ORDER:

1. The Board may conduct a psychiatric evaluation of the Student at the Board's expense. The evaluation shall be at a time convenient for the Student and the Board shall provide transportation to and from the evaluator. The evaluator shall be someone who is qualified to administer, interpret and report on the appropriate tests. The Board shall be entitled to share with the psychiatrist the relevant educational and related records within its possession as part of the evaluation. The Board shall be entitled to have the relevant members of its staff speak with the psychiatrist about their observations of, experiences with, and concerns about the Student, and, if appropriate, shall be entitled to develop goals and objectives based on the results.
2. The Board shall give the Student a copy of the evaluation and share with the Student any communications with the evaluating psychiatrist.
3. The Student shall make himself available for the psychiatric evaluation.
4. The Board shall have a IEP meeting two weeks after receiving the results of the evaluation to discuss the evaluation and its impact on the Student's IEP.