

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Parents:

Mother appearing *pro se*,  
Father appearing *pro se*

Appearing on behalf of the Easton  
Board of Education:

Attorney Marsha Moses  
Berchem, Moses & Devlin  
75 Broad Street  
Milford, CT 06460

Appearing before:

Attorney Deborah R. Kearns,  
Hearing Officer

**FINAL DECISION AND ORDER**

ISSUES

- I. Whether the LEA must convene a PPT at the request of a mother whose divorce decree grants legal custody and medical and educational decisions to the father.

PROCEDURAL HISTORY

The Mother requested that the local educational agency convene a planning and placement team meeting to address whether the child requires special education services. The Father with legal custody declined to participate or provide consent for such a meeting. The local educational agency requested the Parents provide documentation of their respective rights to make or decline the request for a PPT. The documentation provided is in the form of a Memorandum of Decision which does not sufficiently clarify whether the Mother could request a PPT meeting or whether the Father could prevent the meeting from occurring. The Mother requested a special education due process hearing pursuant to 20 U.S.C. § 1401 *et seq.* as amended.

The hearing was convened to address the local educational agency's (LEA's) Motion for Joinder. The Father testified he agreed to be joined as a party, the claimant Mother did not object to the Father being joined as a party in the due process hearing. The Motion for Joinder was granted and is therefore not addressed in the decision.

The Father testified he would not provide consent to the school to evaluate the child or consent to initial placement of the child in a special education program. The LEA

then made an oral Motion to Dismiss the action, since any meeting would be meaningless without the cooperation of the Father. Both the Mother and Father agreed to waive any notice of the motion and agreed the matter should be argued while all the parties were present.

#### ARGUMENTS/FINDINGS OF FACT

1. The Mother, who is divorced from the Father, requested that the LEA convene a PPT meeting to review whether the child is in need of special education services. The Mother objects to the LEA's Motion to Dismiss the due process action. The Mother argues the child received special education services from the time he was three until the end of third grade. Once the Father had legal custody of the children he removed the child from special education in 2004. The Mother believes the LEA should determine if the child may require special education services to support transition to middle school, in light of her concerns about his current educational performance.

2. The Parents divorced during the child's third grade year; the divorce decree places legal custody including medical and educational decision making solely with the Father. The LEA attached relevant portions of the Memorandum of Decision to the LEA's Motion for Joinder. The LEA argues in its oral Motion to Dismiss, the Memorandum of Decision makes provisions for the Parents' roles with regard to the medical and educational care of the minor children. The Mother may not have access to their medical and academic records. The Father is required to provide the Mother with copies of the children's report cards. The Mother may participate and observe the children's school activities and participate in PPT meetings. The school administration can only obtain consent, if required, from the Father. The Father forwarded portions of the Memorandum of Decision to the children's school administrators to make them aware of the court orders as they apply to the two parents. The Motion for Joinder provides that the LEA has no concerns about the child's educational performance which would cause it to convene a PPT meeting.

3. The Mother argues that subsequent to the divorce in 2004, the child was exited from special education at the request of the Father, even though the LEA proposed a special education program for the 2004-2005 school year. The Mother concedes he was doing well at that time. The Father did not provide the child's report cards to the Mother. The Mother believes the child is struggling in the transition from elementary to middle school and requested the school evaluate the current situation. The Mother has observed the child not keeping up with home work. The Mother indicated that the child received detention and the report cards reflect the child has received some "D" and "F" grades.

4. The Father argues he does not believe the child requires special education. He does not intend to provide consent to evaluate the child or consent to the child's placement in special education.

5. The LEA argues they are in an untenable position. They are concerned about the restrictions in the decree limiting the Mother's access to academic records and that it is not possible to evaluate the child without the Father's consent. There is concern that the LEA would not be able to act since the Father stated he will not provide consent to evaluate the child or place him in special education.

#### CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq* as amended (IDEA) and Conn. Agencies Regs. § 10-76a-1(d) regulates referral of children to determine whether the child has a disability and is thereby entitled to a free and appropriate public education.

The child was exited from special education in 2004 at the Father's request. The Mother has asked the LEA to look into the child's school problems, which the school can accomplish as a regular education function. The child is not currently identified as a child with a disability. In order to identify the child the LEA would most certainly need to obtain the consent of the Father. The LEA should not have to interpret the language of the divorced parents Memorandum of Decision, to determine who can ask the LEA to act on behalf of the child. The LEA properly requested the Parents to provide them with documentation from the family court.

Any evaluation conducted to determine whether the child is a "child with a disability" as defined in 34 U.S. C. § 300.300 requires the Father's consent which, according to the Memorandum of Decision, he alone can provide. The Father states he refuses to consent to evaluating or placing the child in a special education program. The Mother states the parties are currently involved in a hearing in the Connecticut Superior Court. The Superior Court has access to information which is relevant to the orders contained in the Memorandum of Decision which defines the rights and obligations of the two parents. It is appropriate to grant the LEA's Motion to Dismiss the request for due process at this time.

#### FINAL DECISION AND ORDER

1. The matter is dismissed without prejudice.