

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Portland Board of Education

Appearing of behalf of the Parents: Mother appeared pro se

Appearing of behalf of the Board: Attorney Craig Meuser
Shipman & Goodwin, LLP
One American Row
Hartford, Connecticut 06103-2819

Appearing before: Attorney Margaret J. Slez, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Has the Board demonstrated the need for continuing the student's eligibility status and the provision of special education and related services to the student?
2. Has the Board demonstrated the need for a triennial evaluation of the student notwithstanding the parent's refusal to consent to such evaluation?

SUMMARY:

A. is a 9 year-old student in his second year of third grade at the Board school and has been receiving special education and related services since the 1997-98 school year when he was in the first grade. The student has been identified as having a speech/language disability. On or about June 12, 2000, the parent refused to give consent to a triennial evaluation. On September 5, 2000, and on October 18, 2000, the parent asked that the student be removed from the Board special education program. On October 25, 2000, the Board initiated this due process hearing pursuant to 34 CFR Section 300.505.

PROCEDURAL HISTORY:

The parent was not represented by counsel. Hearing of this matter was scheduled to take place on November 21, 2000. On that date, the Board presented its case in full, but the parent announced that she had to leave and would have to present her case on another date. The parties agreed to complete the hearing of this matter on December 20, 2000, but on the evening of December 19, 2000, the parent left a phone message for the hearing officer stating that she was ill and could not go forward the next day. On December 20, 2000, the hearing officer gave notice to the parties that hearing of this matter would be

completed on January 16, 2001, and that no further requests for postponement would be granted. Such notice was sent by regular mail to the parent. On January 16, 2001, the Board was present but the parent failed to appear.

FINDINGS OF FACT:

1. As the result of his speech/language impairment, the student has been receiving special education and related services since the 1997-98 school year.
2. The student is currently in his second year of third grade at a Board elementary school where he is receiving 15 hours of services per week in reading, language arts, and math; one hour per week of direct speech/language therapy; and one-half hour per week of counseling with the Board social worker. (Exhibit B-39, Testimony of school principal, 11-21-00, Testimony of the student's current special education teacher, 11-21-00)
3. The student is making progress but continues to need special education and related services based on the student's weaknesses in oral language, short-term memory, and auditory processing. Behavioral issues were described as "snowballing" in light of the student's sensitivity to exposing his academic weaknesses to classmates; the student's behavior deteriorates because it is easier for him to take correction for bad behavior than for not performing well academically. (Testimony of the student's current special education teacher, 11-21-00. Termination of speech/language therapy would have a negative impact on all areas of the student's school performance. Testimony of the Board speech/language pathologist, 11-21-00)
4. Educational, psychological, and speech/language evaluations were last undertaken in May-June 1999. (Exhibits B-23, B-24, B-25) The student is now older, more mature, and has made educational progress. New evaluations are necessary in order to obtain further information regarding the student's strengths and weaknesses as well as to obtain an updated, "truer reading of his abilities." (Testimony of the Board speech/language pathologist, 11-21-00). At the IEP meeting held on June 12, 2000, testing instruments to be used for assessment of the student were described to the parent in preparation for the triennial evaluation which is scheduled to take place in the spring of 2001. (Testimony of the School Principal, 11-21-00)
5. Prior to requesting this due process hearing, the Board attempted to resolve the issues by informal means but was unsuccessful in its efforts. (See Exhibits B-32-B-39)
6. The parent has provided no testimony or evidence to support her refusal to consent to evaluation or her request that the student be removed from special education.

CONCLUSIONS OF LAW:

1. Pursuant to 20 U.S.C. Section 1414(b), and based upon the testimony of the four Board witnesses and Board exhibits, the student has been properly identified as an

eligible student in need of special education and related services. The student has a right to a free appropriate public education. 34 C.F.R. Section 300.121. By providing a properly-developed and appropriate IEP for the student, specifically, a program of special education and related services, the Board has met and continues to meet its obligation under the law. C.G.S. Section 10-76d(b). Withdrawal of the student from the Board program would seriously harm the educational welfare of the student and deny his right to FAPE.

2. The Board is seeking to conduct updated assessments and triennial evaluation of the student. Upon refusal by the parent to consent to such evaluation, the Board has properly requested due process hearing in accordance with 34 CFR Section 300.505.
3. In accordance with the requirements of 34 C.F.R. Section 300.532, the Board properly informed the parent as to the identification and purposes of the tests to be administered. The parent has presented no justification for withholding consent to withhold consent. See 34 C.F.R. Section 300.505(c). Where, as in this case, state law does not prohibit the Board from overriding a parent refusal to consent, and the Board believes and has demonstrated that reevaluation is necessary in order to provide FAPE, the Board shall be permitted to conduct such evaluations as are necessary to provide FAPE. See 34 C.F.R. Section 300.505; Federal Register, Vol. 64, No. 48, March 12, 1999, Rules and Regulations, pp. 12609-12611.

FINAL DECISION AND ORDER:

1. The Board has amply demonstrated the need for continuing the student's eligibility status and the provision of special education and related services to the student. Therefore, the parent's request that the student be withdrawn from the Board's special education program is denied.
2. The Board is hereby permitted to override the parent's refusal to consent to testing and shall undertake any educational, psychological, and/or speech/language assessment necessary to determine the student's current needs and prepare the triennial evaluation.