

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

[Consolidated Cases]

[Student] v. Granby Board of Education

Granby Board of Education v. [Student]

Appearing on behalf of the Parents: Attorney Richard Roznoy, Law Office of Richard Roznoy, East Granby, CT

Appearing on behalf of the Board: Attorney Michael McKeon, Sullivan, Schoen, Campana & Connon, LLC, Hartford, CT

Before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether Board's evaluation of the Student was appropriate.
2. If not, whether the Board shall provide for an independent evaluation at public expense, and pursuant to the Parents' request.

PROCEDURAL HISTORY:

The matter was assigned on June 13, 2001. Prehearing conferences were held on June 18 and June 21. The Board filed a Motion to Dismiss Case No. 01-190, which was denied. The Board filed a Motion to Consolidate Case No. 01-188 with Case No. 01-190, which was granted with the consent of the Parents. The parties each requested extensions of the mailing date of the decision prior to the conclusion of testimony, which were granted. The hearing convened on July 11, 2001, and continued on July 18, July 26, August 27 and August 30. The school psychologist Brigitte Duffy, the school social worker Sheri Barnett and the Director of Special Services Thomas DiCorleto testified on behalf of the Board. Assistant Principal Alan Addley, therapist Marsi Callaghan, psychiatrist Stanley Kapuchinski, consulting teacher Maureen Pearson, and the Parents testified during the Parents' case.

At the conclusion of testimony, the Counsel for the Board and the Counsel for the Parent requested a thirty-day extension of the mailing date of the final decision so that transcripts could be received and post-hearing briefs could be filed, which was granted. Counsel for the Board and Counsel for the Parent subsequently requested a two-week extension of the mailing date of the final decision to extend the due date of the post-hearing brief, as transcripts had not yet been received. That request was granted. Counsel for the Board requested a further extension of the due date of the filing of the brief, and an extension of the mailing date of the decision. The due date of the filing of the brief was extended to October 15, but the mailing date of the decision was not extended. The Counsel for the Board requested yet another extension of the due date of the filing of the brief, and an extension of the mailing date of the decision. That request was denied.

To the extent that the 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).

FINDINGS OF FACT:

1. The Student is 15 years old, and in tenth grade at the Board High School. (Exhibit B-1, Testimony Alan Addley)
2. At the Planning and Placement team meeting of February 1, 2001, the team agreed to conduct a psychoeducational evaluation of the Student. (Exhibit B-48) The Parents gave their permission for the Board to conduct the evaluations, which were to include: Developmental History, Cognitive Testing, Educational Testing and a Behavioral Checklist. (Exhibit B-49) The Board subsequently completed a "T.E.A.M" Review of the Student in March 2001. (Exhibit B-53)
3. The Student was referred for evaluation due to behavioral issues and academic problems. (Testimony school psychologist, Brigitte Duffy) The Parents were concerned about the Student not attending class, and about her downward academic spiral. (Testimony Ms. Duff) The Mother was concerned about the Student's at-risk behavior and anxiety. (Testimony Mother) After a fire at the family house in December 1999, the Student had a dramatic change, which resulted in a suicide attempt, and self-mutilation by cutting herself, which the Student reported to her Mother, helped the pain go away, including the pain and pressure of school. (Testimony Mother)
4. The T.E.A.M.¹ Evaluation was conducted in February and March 2001, coordinated by the school psychologist Brigitte Duffy. (Testimony Ms. Duffy, B-53) The school psychologist completed the referral and background information, submitted five written questions to the Parents to obtain the "parent perspective," conducted the psychological evaluation and compiled the team summary and recommendations. (Testimony Ms. Duffy, B-53) Sheri Barnett, the school social worker, completed the Social History Data Form to obtain a

¹ The Board titles its evaluation T.E.A.M., based on Task, Evaluate, Alter and Monitor, which is included on the title page of the evaluation. The Evaluation will hereafter be referred to as the "Team Evaluation."

developmental history of the Student. (Testimony Ms. Barnett, Ms. Duffy) Maureen Pearson, the consulting teacher, compiled the BASC scores for the evaluation. (Testimony Ms. Pearson, B-53)

5. The Student was subject to student referrals and discipline due to class cuts and tardiness during the 2000-2001 school year. (Testimony Alan Addley)(Exhibit P-2, P-3, P-4, P-5, P-6, P-20) This was a consistent pattern for the Student, which escalated in January 2001, and continued until the end of the school year. (Testimony Alan Addley) The vice principal who was knowledgeable about the behavior problems and disciplinary history of the Student was not a part of the evaluation team, and was never formally contacted for input into the Team Evaluation, nor did he contact the members of Team to share information regarding the Student.
6. While the school psychologist asserts that she conducted a thorough review of the Student's records stating she "take[s] out all of the papers from the file and [she] examines them, every single one of them, very closely," her review was less than thorough. The school psychologist testified that she was looking for themes based on the referral question, and she discounted several pertinent items in her review. (Testimony Ms. Duffy) For example, lack of consistency in doing homework has been a problem with the Student since the second grade. (Exhibit B-22) The school psychologist discounted this, and other similar references because it didn't fall within the "themes" for which she was reviewing. (Testimony Ms. Duffy) In addition, while the school psychologist noted that there were behavior difficulties for the Student in eighth grade, there is little mention of these behavioral difficulties in the Team Evaluation. (Testimony Ms. Duffy)
7. The Student attempted suicide in the spring of 2000. This was not mentioned in the Team Evaluation. The school psychologist mentioned self-injurious behaviors in the Team Evaluation, but failed to consider the Student's suicide attempt in her evaluation. (Testimony Ms. Duffy)
8. The school social worker discounted the Student's depression and anxiety symptoms in her evaluation of the Student's developmental history, because she concluded that the Student was functioning well in her courses as she was getting better than passing grades. (Testimony Ms. Barnett)
9. The Team Evaluators did not address the issue of whether the grades constituted a satisfactory performance for the Student, or whether the Student was making merely trivial advancement. This individualized inquiry was not completed, despite the teacher's notations in the report cards such as that the Student's work was inconsistent, that her effort was below teacher's expectations, that the Student was not working to potential and that the Student was frequently off-task. (Exhibit B-71) In his testimony, the vice principal concluded that the report card indicates that the Student is not working to her potential, and that the Student's behaviors could be affecting her performance. (Testimony Alan Addley) But rather than addressing this more thoroughly in the Team Evaluation, the Board merely asserts, through the testimony of the vice principal, that "grades suffer at times when kids move from middle to high school." (Testimony Alan Addley) According to Maureen Pearson, the consulting

teacher who completed the behavioral portion of the evaluation, the Student should get As and Bs on her report card based on her WIAT testing. (Testimony Ms. Pearson)

10. The school social worker did not believe that the Student had attention deficit disorder (hereinafter "ADD"), but believed that the Student's problems were due to traumatic events in her life and the Student's environment. (Testimony Ms. Barnett) Nevertheless, although the evaluators were aware that the Student was seeing a psychiatrist and a therapist, the Team Evaluators never requested any input from these outside providers.
11. The consulting teacher, Maureen Pearson completed the BASC to assess whether Student had ADD. (Testimony Mr. DiCorleto) Ms. Pearson completed her evaluation based on the teachers who completed and returned their forms to her; she did not follow-up with any teachers who failed to return the forms to her. (Testimony Ms. Pearson) Ms. Pearson is a former special education teacher and classroom teacher who serves in the consulting teacher position for the Board. (Testimony Mr. DiCorleto, Ms. Pearson)
12. The general procedure followed by the Board is that if, based on an evaluation, the team believes that ADD is present, medical confirmation is then obtained for an ADD diagnosis. (Testimony Mr. DiCorleto, Ms. Pearson) In this case, no such medical confirmation was sought, although the BASC scores indicated clinically significant and at-risk scores, which could be markers for ADD/ADHD or other problems. (Testimony Ms. Pearson, Exhibit B-53) Without a report from a medical doctor, the Board evaluators would not place a diagnosis of ADD in the Team Evaluation. (Testimony Ms. Pearson) Dr. Stanley Kapuchinski, a psychiatrist, has diagnosed the Student with ADD/ADHD. (Testimony Dr. Kapuchinski, P-16) Marsi Callaghan, the family therapist who is counseling the Student, tested the Student for ADD using the Brown ADD Scales. (Testimony Ms. Callaghan) She found the Student to be in the highly probable range. (Testimony Ms. Callaghan)
13. As part of the evaluation team discussions, the Board members of the PPT team agreed that the Parents had to provide evidence that there was no evidence of substance abuse by the Student prior to the Student receiving any services. (Testimony Ms. Duffy) The Director of Special Services, Mr. DiCorleto, advised the school psychologist on his interpretation of the law that students are not eligible for IDEA services if they are abusing substances. (Testimony Ms. Duffy) No member of the evaluation team suggested that a substance abuse assessment should be completed as part of the evaluation due to the Team's concerns about the Student's possible substance abuse. (Testimony Ms. Duffy) The school psychologist had no evidence to support her concerns that the Student was abusing substances; rather, she was aware of a possible suspicion that the Student was using substances. (Testimony Ms. Duffy) The school psychologist did not include any mention of possible substance abuse in her evaluation because she didn't want to hypothesize without a basis. (Testimony Ms. Duffy) The school psychologist, however, joined the team in recommending that the Parents pursue a medical evaluation on their own to determine whether the Student was abusing substances. (Testimony Ms. Duffy) The school psychologist asserted that the information of suspected drug abuse was needed for a complete evaluation, but the Parents were told they must complete the drug assessment on their own. (Testimony Ms. Duffy)

14. In her evaluation, the school psychologist noted that the Student had elevated scales in somatization, depression, anxiety and hostility. (Testimony Ms. Duffy, Exhibit B-53) Nevertheless, the school psychologist did not follow-up with either the therapist, or the Student's psychiatrist regarding the Student for a complete evaluation, even when the school psychologist had knowledge that the Student had been taking the drugs Paxil and Concerta at the time of the evaluation. (Testimony Ms. Duffy, Ms. Callaghan, Dr. Kapuchinski)
15. While the Team was aware of the Student's therapist and psychiatrist at about the time the evaluation was completed, the Evaluation Team failed to follow-up with the therapist and psychiatrist in its Team Evaluation. According to the Director of Special Services, consultation with outside personnel was probably an area that should have been covered in the Team Evaluation. (Testimony Mr. DiCorleto)
16. The school psychologist completed one classroom observation of the Student. (Exhibit B-53) In that classroom observation, the Student was completely off task for approximately 90 percent of the observation time. (Exhibit B-53) After the school psychologist learned that the Student was on Concerta, a medication prescribed for attention difficulties, the school psychologist did not complete an additional classroom observation of the Student. (Testimony Ms. Duffy)
17. According to the school psychologist, it was impossible for the team to conclude that the Student had ADD since the symptoms of ADD also appear in other clusters of disorders. As the Student was experiencing symptoms of depression and anxiety at the same time, the school psychologist could not determine whether or not the Student had symptoms of ADD. (Testimony Ms. Duffy)
18. The school psychologist wrote the Team Summary and Recommendations for the report, which indicated that the Student was not eligible for identification for a specific learning disability, as emotionally disturbed, and due to attention deficit disorder (as other health impaired). (Testimony Ms. Duffy, Ms. Pearson, Exhibit B-53) At the meeting to compile the evaluation, there was no discussion regarding delaying the final report for follow-up with Dr. Kapuchinski or Marsi Callaghan. (Testimony Ms. Pearson)
19. At the conclusion of the school year 2000-2001, the Student's final grades were in the C- to B+ range. Her fourth quarter grades were: Science – D+, Algebra – B+, English – D-, World Civ – C+, Spanish – B, 3-D A – B, P.E. – C. The Student's English grades during ninth grade were in the D and F range. (Testimony Father) This had been an area of strength for the Student in the past. (Testimony Father)

CONCLUSIONS OF LAW:

1. To determine if a Student is eligible for services under the Individuals with Disabilities Education Act (IDEA), the Board must conduct a full and individual initial evaluation. 34 C.F.R. Sec. 300.531, 20 U.S.C. 1414(a)(1)
2. In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted for each child referred. Conn. Agencies Regs. Sec. 10-76d-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)
3. In evaluating the Student, the Board must utilize a variety of assessment tools and strategies to gather relevant functional and developmental information about the child. 34 C.F.R. Sec. 300.532(b) The Student should be assessed in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. 34 C.F.R. Sec. 300.532(g) The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category. 34 C.F.R. Sec. 300.532(h)
4. The term "child with a disability" means a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services. 20 U.S.C. Sec. 1401(3), 34 C.F.R. Sec. 30017(a)(1) The Board purportedly evaluated the Student for a specific learning disability, serious emotional disturbance, and as other health impaired (ADD/ADHD).
5. In interpreting evaluation data, the Board shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and ensure that information obtained from these sources is documented and carefully considered. 34 C.F.R. Sec. 300.535 Based on the Testimony of the Board's Team Evaluators, and a review of the Team Evaluation, the Board failed to conduct such a careful consideration of the Student.
6. The Board's Team Evaluation was not appropriately comprehensive. Among the deficiencies in the Evaluation was that the Team failed to include information from the Student's treating psychiatrist and therapist. That information would be absolutely integral to the comprehensive evaluation of the Student. The Team was aware of these providers, and did not elicit their input. By this omission, the Team Evaluation was not appropriate.
7. The school psychologist's portion of the Team Evaluation, including the Team Summary and Recommendations, was unimpressive, and not appropriate. The school psychologist's evaluation indicates that, while the Student is experiencing attention difficulties, "it is difficult to discern how much of this behavior is due to [the Student's] depression and

anxiety symptoms.” (Exhibit B-53) That said, the school psychologist never completed additional testing or consulted with the treating psychiatrist or therapist, or other psychologist or psychiatrist to further evaluate this area. Moreover, despite knowledge that the Student was prescribed Paxil and Concerta, no member of the Evaluation Team, including the school psychologist, consulted the treating psychiatrist, or recommended that the Team Evaluation include a psychiatric evaluation so that the evaluation of the Student was appropriately comprehensive, and included 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)

8. The Team Evaluation was also not sufficiently comprehensive, as there was no appropriate follow-up regarding possible ADD/ADHD after compilation of the BASC ratings. The consulting teacher conducted the “Behavioral Evaluation” which consisted of compiling BASC checklists completed by the Student’s teachers. (Testimony Ms. Pearson) The consulting teacher did not receive responses from each of the Student’s teachers who were given the checklists, and she did not contact any of the teachers who failed to respond to obtain their responses to the checklist. (Testimony Ms. Pearson) This lack of follow-up with the teachers is cause for concern with the validity of the BASC scores, and indicates a further concern with the inappropriateness of the Board’s Team Evaluation. The consulting teacher testified that she had no training in compiling the BASC, but had compiled BASC results for six years. (Testimony Ms. Pearson) While the lack of training may indeed lend further support to the inappropriateness of the evaluation, no evidence was admitted as to what type of training is necessary for compilation of the BASC checklists. Therefore, the BASC ratings can be reviewed. While each teacher who received the BASC checklists did not complete them, the results indicated at-risk and clinically significant scores, and no medical follow-up was sought to determine whether the Student had ADD/ADHD. The Team Evaluation failed to appropriately follow-up on whether the Student has ADD/ADHD with appropriately medical personnel. Therefore, the Evaluation was not appropriate.
9. The Team failed to elicit complete information on discipline and behavioral referrals, which would be necessary reports of the Student’s educational/academic progress, social and emotional, status required pursuant to state and federal regulations. Conn. Agencies Regs. Sec. 10-76d-9(a), 34 C.F.R. 300.532(g)
10. The Board failed to adequately assess the adverse impact on the Student’s educational performance, and testified at the hearing that “grades suffer at times when kids move from middle to high school.” That is not an appropriate individualized response to whether this particular Student’s educational performance has been adversely impacted by a disability. The Board must conduct a full *and individual* initial evaluation. 34 C.F.R. Sec. 300.531 The Board must carefully consider all information in its evaluation. As the Board failed to do so, the evaluation was not appropriate.
11. The Director of Special Services testified that substance abuse would negate the rights of a Student to IDEA services. (Testimony Mr. DiCorleto) While it is accurate, as the Director testified, that substance abuse is not a category of disability under the IDEA, the Board is not without responsibility if it believes that a student undergoing an evaluation is possibly

abusing substances. If the Board has a legitimate concern regarding substance abuse, it would be appropriate for the Board to provide for a substance abuse assessment as part of the Student's comprehensive evaluation pursuant to 34 C.F.R. 300.532. Such an assessment would be appropriate when the child is assessed in all areas related to the suspected disability. *Id.* This type of evaluation is appropriate for students receiving services under IDEA if there is a basis in fact for believing the student in question may be drug or alcohol dependent. *Garner (Drug Tests)* 305:53 (OCR 1989)

12. Due to the deficiencies and omissions in the Team Evaluation, the evaluation completed by the Board was not sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. Sec. 300.532 (h)
13. A parent has a right to an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the Board. 34 C.F.R. Sec. 300.502. The Parents are seeking such an evaluation in this case.
14. If the parent requests an independent educational evaluation at public expense, the Board must without unnecessary delay either initiate a hearing to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense. 34 C.F.R. Sec. 300.502. The Board initiated the hearing regarding the evaluation, but has not shown that its evaluation is appropriate. Therefore, the Board must provide the Parents an independent educational evaluation at public expense.

FINAL DECISION AND ORDER:

1. The Board's evaluation of the Student was not appropriate.
2. The Board shall provide for an independent evaluation of the Student at the Board's expense.
3. A team from the Connecticut Children's Medical Center shall conduct the comprehensive evaluation. The neuropsychological and educational evaluation shall include a substance abuse assessment and a psychiatric evaluation.
4. Within ten days of the issuance of this order, the parties shall convene a PPT meeting to schedule the independent evaluation.