



## **SUMMARY**

The child was first identified in a kindergarten screening as child who might require special education services. Very early in the school year the parent claimed the child was the target of racial discrimination while at school. Very early in the child's kindergarten year the teacher identified deficiencies in the child's ability to understand directions and expected classroom behavior. Upon evaluation various assessments confirmed the staff's suspicions that the child would benefit from special education instruction. The parent refused any special education services which removed the child from his regular education classroom. Later, when the school staff sought to obtain a neuropsychological evaluation, the parents refused to consent to the evaluation and withdrew the child from special education services. The child's evaluations and class performance indicate he requires further diagnostic evaluations and special education instruction.

## **FINDINGS OF FACT**

1. The kindergarten teacher conducted a Kindergarten Screening Inventory dated September 4, 2002, which identifies areas of skill strengths and weakness. The Pupil Skill Profile indicates there are four skills that require introductory level instruction, three skills that require skill refinement and ten skills at the mastery level. Based on the child's difficulty processing oral language, attention span, motor skills and social skills, and failure on the speech screening the kindergarten teacher referred the child to the school's Early Intervention Team (EIT). (Exhibits, B-1, B-2, Testimony, Kindergarten Teacher)
2. The school's Early Intervention Team (EIT) met on September 10, 2002. On three previous occasions, the school staff contacted the parents to convey concerns about the child's understanding directions, language and responsiveness to questions. The school psychologist reports difficulties with language, tactile defensiveness, inability to follow two-step directions, signs of pervasive developmental disorder, perseveration, and shouting and repeating answers. The EIT decided further testing was needed. (Exhibit B-3, Testimony, Kindergarten Teacher, Testimony, School Psychologist)
3. An Individual Education Plan (IEP) meeting convened on October 2, 2002, to assess whether the child was eligible for special education services. The team decided to conduct an initial evaluation. The parents consented to the following evaluations: the NEPSY, BASC, YCAT, Developmental Questionnaire, and Occupational Therapy Evaluation. (Exhibit, B-6, B-7)
4. On the Young Children's Achievement Test (YCAT), the child's score (73) is below average. On the Test of Visual Perception-2, the child's score (79) indicates he would have difficulty with hand-eye coordination skills. On the Woodcock Reading Mastery Test-REVISEDnu, the child performed in the upper end of the average range on the reading readiness cluster, he performed in the average range on the visual-

auditory cluster; on the sight word subtest his performance was average, on the letter identification subtest his score is average, on the Basic Skills Cluster his word attack score is above average. On word identification his score is in the superior range and average on word attack skills. The Brigance Diagnostic Comprehension Inventory of Basic Skills Revised (various reading readiness subtests), his scores vary between pre-K readiness on three subtest, kindergarten readiness on four subtests and advance readiness on ten subtests. The student scored in the 21<sup>st</sup> percentile on the reading subtest of the Young Children's Achievement Test (YCAT) when his Woodcock Reading Mastery Test scores range from average to superior. (Exhibit B-30)

5. The school psychologist cautions the findings represent an unreliable sample of mental functioning due to language processing difficulties and therefore the reliability of cognitive testing is questionable. It is noted areas of weakness may be relied upon to plan for the child's educational program. The cognitive and neuropsychological testing reveals stronger visual reasoning than auditory verbal domains. The child's difficulties manifest themselves in hyperactive and anxious behavior. He gives up easily and says he can't perform requested tasks. He had made steady progress at adapting to classroom routines at the time of the testing in October, 2002. (Exhibit B-30)
6. The NEPSY dated 11/6/02, assesses the child's attention, executive function and memory. The child scored in the average range for executive planning. He had difficulty keeping the verbally expressed rules in working memory. It is noted his auditory attention was "unscorable" which brings the entire test results into question as the protocol requires the directions be given auditorily. Attention to visual stimuli was in the average range. A breakdown was noted when the task became increasingly difficult. Memory ability for both immediate and delayed visual information is in the low average range. His ability to acquire and retrieve verbal labels, both immediate and delayed is in the low average range. Auditory verbal processing is weak as evidenced by both verbal expression and understanding directions. The overall summary and recommendations for the psychological battery notes language processing appears to interfere with valid test results. (Exhibit B-30)
7. An Occupational Therapy Evaluation dated November, 2002, concludes the child has the ability to execute in-hand manipulation tasks quickly but his ability to plan and coordinate fine-motor movements is an area of weakness. He shows signs of poor motor planning, sensitivity to too much verbal auditory input which results in task avoidance. There is a recommendation for occupational therapy intervention. (Exhibit B-9)
8. A Speech and Language Evaluation dated, 11/20/2002, concludes the child is exhibiting significant language deficits, characterized by overall difficulty understanding directions, answering basic "wh" questions and using and understanding age appropriate vocabulary including the use of age appropriate pronouns and grammar. (Exhibit B-10, Testimony, Speech Pathologist)

9. On December 17, 2002 the Individual Education Planning (IEP) Team found the child is eligible for special education. The parents refused consent for the initial placement in special education. (Exhibit HO-3, B-12, B-13)
10. On February 13, 2003, the parents consented to placing the child in special education, so long as he was not removed from the regular education classroom. The IEP contained goals for expressive and written language, skill development and one hour per week of direct services with the speech and language therapy. (Exhibit, B-16, B-18)
11. The child's report card issued in January for 2002-2003, confirms difficulty with mathematics and fine motor skills. He has satisfactory performance on behavior and work habits. He completes homework on time, demonstrates a reasonable attention span, self-control, deals with emotions appropriately, follows classroom rules and instructions, follows directions, shows consideration and respect for others. The comments section notes the child is kind, has outstanding rote memory, that it is a joy to see him participating in class activities and he has difficulty understanding verbal direction and suggests he would benefit from extra support for math, gross motor, and language arts. (Exhibit, B-14)
12. On May 7, 2003 the parent filed a complaint claiming illegal discrimination with the State of Connecticut Commission on Human Rights and Opportunities. The notarized affidavit in the complaint states the child was denied equal services and it is believed his race, as an African American, was a factor, in part, in the action toward the child. The parent claims Conn. Gen. Stats §46a-58(a) and §46a-64a(1) are violated. The child is a kindergartener, he is the only black child in his class and this is his first classroom experience. The mother claims from the beginning of the school year the child was the subject of harassment from classmates based on race and color. He has been called "blackie", "nigger" and referred to as "dirty", he has been kicked and hit. The parent made complaints to the teacher two weeks after the start of school. The parent believes some of the complaints about the child's school performance are related to their claim the child is the subject of racial discrimination. They are not willing to allow the child to be removed from the regular education classroom to receive special education services. (Exhibit, B-19)
13. The LEA letter dated, May 29, 2003, was sent to the parents suggesting a neuropsychological evaluation was necessary to fully assess the child's learning style and provide diagnostic information and educational recommendations to plan for the child's program. The parents responded by letter to the LEA, received June 3, 2003, which states the parents did not want the child to be evaluated or to be in special education, they felt coerced into placing the child into special education. The letter states they may be seeking outside evaluations of the child to determine whether to take legal action. The classroom teachers confirms there was a discussion with the parent and the principal in her presence regarding participation in special education services as a condition of being promoted to first grade. She stated she believed the

child needed special education support in the first grade as well as kindergarten. (Exhibit B-22, Testimony, Kindergarten Teacher)

14. The child started the first grade in the LEA school. The teacher testified the child was placed in her room but she was not given information about his status as a special education student to allow her to develop independent conclusions about the child's needs. At the first grade teacher's request an early intervention team (EIT) meeting convened on October 20, 2003. The teacher provided a written summary of the child's strengths and weaknesses. Classroom strategies provide small group instruction and other classroom interventions. The teacher contacted the parents and found them to be unresponsive. The first grade teacher reports similar strengths and weakness as those reported for the kindergarten year. The team concluded the child required special education services and the child's evaluations needs were to be discussed at an IEP meeting. (Exhibit, B-23, Testimony, First Grade Teacher)
15. An undated progress report states the child's score on the Gates-MacGintie Test (version unspecified) was a fifty-seven (57) in the sixth (6<sup>th</sup>) percentile for the 2003 spring period. There is no test result for the fall, 2002. The progress report notes the child follows routine structure but gets upset when the daily structure changes; the child does not respond in complete sentences. The child's sight word reading is better than his comprehension. The child's June 2003, report card, is not part of the record. (Exhibit B-18, Testimony, Kindergarten Teacher, Testimony, First Grade Teacher)
16. On October 22, 2003, the parents were invited to attend an IEP meeting to discuss placement in special education and additional evaluation. The parents did not attend the IEP meeting which convened on November 3, 2003. The team recommended a neuropsychological evaluation be given by an independent evaluator. The parents refused to consent to the evaluation as noted in the Notice of Consent to Conduct a Reevaluation dated 11/3/03. (Exhibit B-24, B-28, B-29)
17. The child came into kindergarten with reading performance on the Woodcock Reading Mastery with scores in the average to superior range; after 1.5 years of school and three months of direct reading instruction from the schools reading consultant he is showing a lack of progress on his reading test (DRA) scores. The child's report card is showing a number of areas where he is experiencing educational difficulties. (Exhibit B-31, B-32, Testimony, First Grade Teacher)
18. Based on the child's progress and other academic, behavior and social concerns the IEP team believes they require additional diagnostic information to provide the child with a free appropriate public education (FAPE). (Testimony, School Psychologist, Testimony, Director of Pupil Personnel Services)

**CONCLUSIONS OF LAW**

1. The child is eligible to receive a free appropriate public education (FAPE) with special education instruction and supplementary aids and services as required by the provisions of the Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1401 *et seq.*; and the Conn. Gen. Stats. § 10-76 *et seq.*
2. On December 22, 2002, the IEP team recommended special education services for the child, the parent refused to place the child in special education. The parents agreed to an initial placement in special education services on February 17, 2003, on the condition the child receive all special education services in the child's regular education classroom. The parents believe the decision to place the child in special education resulted from conflicts which arose from their claim the child is the target of racial discrimination.
3. When the IEP team requested additional evaluations the parents refused to provide consent for the evaluations and withdrew the child from special education in June 2003.
4. During the 2003-2004, school year the LEA, seeking to provide a FAPE for the child, convened a properly noticed IEP meeting and concluded the team required a neuropsychological evaluation. The basis for the recommendation was the result of testing conducted in the fall of 2002, classroom performance, behavior and the request of the first grade teacher. The parents refused to attend the IEP meeting. The parents refused to consent to the evaluations recommended by the IEP team. The LEA attempted to work with the parent to obtain consent for the evaluation and the provision of special education services to the child.
5. 20 U.S.C. § 1414 (b)(2)(A) provides for reevaluation of a child with a disability if a parent or teacher requests the action. In the present case, the first grade teacher testified additional evaluations are necessary to meet the educational needs of the child.
6. Pursuant to the statute, if the parent refuses to consent to the evaluation, the LEA may seek an order for an evaluation by means of due process procedures under 20 USC 1415 except as limited by state law relating to parental consent. 20 U.S.C. 1414 (b) (C) (i) (ii)
7. Connecticut General Statutes and its Regulations provide for evaluation or reevaluation upon the request of personnel working with the child. Conn. Agencies Reg. § 10-76d-9. The testing must meet the conditions set forth in the regulation which provides for evaluation procedures, instruments and techniques that are non-discriminatory, administered to ensure that when a test is administered to a child with impaired sensory, manual or speaking skills, that the test results accurately reflect the child's aptitude or achievement level. Conn. Agencies Reg. §10-76d-9 (b).

8. Connecticut State law provides whenever the LEA proposes an evaluation for a child and the parent refuses to give consent for evaluation or re-evaluation or withdraws such consent, the LEA may request a hearing in accordance with Section 10-76h(a)(1). The hearing officer shall have the authority to confirm, modify or reject the identification, evaluation or educational placement of the child. In the case where the parent refuses consent for evaluation or re-evaluation, the hearing officer may order an initial evaluation or re-evaluation without the consent of such parent, except that if the parent appeals such decision, the child or pupil may not be evaluated pending the disposition of the appeal, see Conn. Gen. Stat. 10-76h (d) (1).
9. The LEA has demonstrated its attempt to involve the parents in the decision to meet for the purposes of planning the child's program as required by 34 C.F.R. § 300.345(d). It has provide the notice to the parents of its intent to evaluate or reevaluate the child as required 34 C.F.R. § 300.503. The IEP team determined that special education placement and services are necessary for the student to receive FAPE. The parent expressly denied consent to evaluate the child by letter attached to the Notice of Consent to Evaluate. (Exhibit, B-29)
10. The child came into kindergarten in the fall of 2002, with reading performance on the Woodcock Reading Mastery in the average to superior range. After 1.5 years of school and three months of direct reading instruction from the schools reading consultant he is showing a lack of progress on his reading test (DRA) scores. The child's report card is showing number of subjects and skills where the child is experiencing educational difficulty. The inconsistencies should be investigated.
11. The LEA seeks due process pursuant to 20 U.S.C. §§ 1414, 1415 and 34 C.F.R. § 300.505 (b) and 300.507 which provides for the LEA to pursue evaluations by using due process procedures when the parents of a child with a disability refuse consent for an initial evaluation or a reevaluation. The LEA has met its burden at a due process hearing, that it has an adequate basis to suspect the existence of a disability that impairs the child's educational performance. The LEA has demonstrated it has tried remedial measures to improve academic progress without success. The IEP team needs further information about the child's strengths weaknesses and unique learning style in order to provide the child with a free and appropriate public education.

### **FINAL DECISION AND ORDER**

1. The LEA may undertake a neuropsychological assessment of the child conducted by an independent evaluator which will determine the child's current needs and make recommendations for the child's academic program. The evaluation must meet the requirements of Conn. Agencies Reg. § 10-76d-9(b). The child is not to be removed from his school for the evaluation.

2. The LEA may plan and implement a special education program with supplementary aids and services, to the extent the LEA can provide the specialized instruction without removing the child from his regular, education, first, grade classroom.