

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Easton Board of Education v. Student

Appearing on behalf of the Parent:

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Appearing on behalf of the Board:

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Appearing before:

Mary H.B. Gelfman, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Shall the Hearing Officer override the Parent's refusal to consent to a psychiatric evaluation of Student, requested by the Board?
2. Should homebound instruction continue during Student's transition back to school?

PROCEDURAL HISTORY:

After the Parent refused consent for a psychiatric evaluation for Student requested by the Board, this hearing was requested by the Board on February 2, 2004, and the undersigned Hearing Officer was appointed on February 3. A pre-hearing conference was held on February 10 and the hearing was scheduled for February 27. Because the Board was unavailable on February 27, the hearing was re-scheduled for March 8 and the deadline for mailing the final decision and order was extended from March 18 to April 17, 2004.

When the hearing convened on March 8, the Parties requested time to discuss settlement, which the Hearing Officer granted. Later that day, the Parties notified the Hearing Officer that a settlement had been reached. However, the Parties requested another hearing date, which was set for March 18. The Hearing Officer was notified by the

Parent's Attorney on March 16 that the Parties had been unable to resolve their differences. When the hearing convened on March 18, the Parties again requested time to discuss settlement. A settlement was reached that provides for a mechanism to select the psychiatric evaluator and other matters related to the evaluation to be performed with the consent of the Parent.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340, 20 IDELR 736 (S.D. Tex. 1993)

All motions and objections not previously ruled upon, if any, are hereby overruled.

FINDINGS OF FACT:

1. Student is now nine years of age (birth-date December 31, 1994). She was referred for evaluation when she was in kindergarten and received support services under § 504 of the Rehabilitation Act in first grade. She was identified as in need of special education, classified as seriously emotionally disturbed at age seven. (Exhibits B-5, B-14, B-34)

2. At the Board's request, Student was observed in grade 1 (May and June, 2002) by a psychiatrist because she:

had been demonstrating excessive anxiety and depression, making it impossible for her mother to leave the classroom.

This observer recommended a psychiatric diagnostic evaluation including a home visit. (Exhibit B-27)

3. Another psychiatrist evaluated Student in August, 2002, at the Board's request. This specialist provided a diagnostic impression of Separation-Anxiety Disorder, Childhood Depression, and Paxil-induced Manic Episode (Rule-out Bipolar Disorder, Type III). In response to some of the Board's specific questions, this psychiatrist recommended:

A behavioral treatment approach, coordinated between home and school.

Student's mother should not be in the classroom.

Student should be supported in the classroom by a trained paraprofessional.

"Time out" arrangements in school should be provided. (Exhibit B-38)

4. At a Planning and Placement Team (PPT) meeting on September 30, 2002, the psychiatric evaluation was reviewed. Student had been doing well in class and seemed to be responding to the support system in place. The PPT offered an extended school year for the summer of 2003, to support the goals in the Individualized Education Program (IEP). The PPT mentioned the psychiatric evaluator's recommendation of individual and family psychiatric treatment. It was agreed that the team would meet bi-weekly to monitor Student's progress. (Exhibit B-43)

5. The record for this hearing includes many e-mails between school staff members and Parent, reflecting positive communication and support. (Exhibits B-60, B-99)

6. The PPT met on September 17, 2003, for an annual review of Student's program. She was reported to be doing well in third grade, although she had had a difficult time during summer vacation. The paraprofessional classroom support was described as "up to full time". A summer program for 2004 was recommended. (Exhibit B-63)
7. The PPT re-convened on November 3, 2003. Student had been unable to attend school since October 9, 2003, and had been recently diagnosed with Bi-Polar Disorder. Two physicians were quoted by Parent: medication was being adjusted. Parent consented to communication between Student's treating physicians and the Board's Consulting Psychiatrist. Homebound instruction was scheduled. (Exhibit B-77)
8. The PPT met on December 19, 2003, to review Student's homebound program. The Board requested consent for an independent psychiatric evaluation, which the Parent refused to give at this time. Sometimes Student had been unavailable for homebound instruction, perhaps due to side effects of medication. Student had attended a few school activities with her Parent, but was unable to return to school on a regular basis. There was discussion of a transition plan to encourage Student to return to school. (Exhibit B-85)
9. Parent provided the Board with a report from a psychiatrist who had seen Student for a diagnostic evaluation on January 5, 2004. This psychiatrist confirmed the prior diagnosis of Bi-Polar Disorder, with a rule-out for learning disability. (Exhibit B-91)
10. The PPT met on January 30, 2004, to review Student's current level of functioning and to plan for a transition back into school. Parent reported difficulties with medication. The PPT again requested an independent psychiatric evaluation, and the Parent again refused consent, citing Student's fragile condition. (Exhibit B-94)

CONCLUSIONS OF LAW AND DISCUSSION:

1. Pursuant to 34 C.F.R. § 300.505(a)(1)(i), parental consent is required for initial evaluation or re-evaluation.
2. Pursuant to 34 C.F.R. § 300.505(b), when a parent refuses consent for an evaluation, the board of education may request a hearing. The Hearing Officer may override the parent's refusal to consent to the evaluation.
3. Pursuant to Section 10-76h-13(e), Regulations of Connecticut State Agencies (R.C.S.A.), a Hearing Officer may require an independent evaluation.
4. While the Hearing Officer has the legal authority to order an evaluation and to select the evaluator, this authority should be exercised only as a last resort. Given the sensitivity of a psychiatric evaluation and the importance of the credibility of the evaluator with both parties, an agreement is to be preferred over an order.

5. The Board's record of support and requests for additional information in order to provide an appropriate educational program for Student shows great concern for Student and her family. The Parent is dealing valiantly with a very worrisome situation. An independent psychiatric evaluation will be helpful to both parties.
6. Pursuant to 34 C.F.R. §§ 300.507 and 300.505, and notwithstanding Section 10-76h-16(d), R.C.S.A., the agreement of the parties, Exhibit A, is incorporated by reference into this decision.

FINAL DECISION AND ORDER:

The Parties shall select a psychiatric evaluator and proceed with the evaluation as set forth in their agreement of March 18, 2004.