

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Norwich Board of Education v. Student

Appearing on behalf of the Board of Education: Attorney Linda L. Yoder
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Appearing on behalf of the parent: pro se

Appearing before: Attorney Deborah R. Kearns
Hearing Officer

ISSUE:

Whether the local educational agency (LEA) can without the parent's consent release school records to an evaluator the parties have agreed will conduct a risk assessment and a psychiatric evaluation, for a child with disabilities to whom the LEA provides specialized instructions and related services?

PROCEDURAL HISTORY:

The hearing was requested by the board of education. Requests for extensions to permit scheduling of hearing dates were granted. On the first day of hearing, the parent wanted an additional continuance to retain counsel. The board opposed a delay. After a break the parent decided she was prepared to proceed on the very limited issue for hearing. The parties agreed to provide post-hearing briefs to each other and to the hearing officer. The board did not receive a copy of the parent's post-hearing brief. They requested an extension to allow time to respond to the parent's post-hearing brief. The record closed July 22, 2004, the date the board confirmed it would not be issuing a response to the parent's post-hearing brief. The parent's additional issues for hearing are distinct from the limited issues the LEA claims in its request for due process. The parties agreed at the outset of the hearing they were prepared to proceed on the limited issues in the LEA's "Request for Impartial Education Hearing". The parent will decide if she will proceed with other issues at a later date.

SUMMARY OF THE FACTS:

The local educational agency (LEA) claims follow: The child was excluded from the LEA school effective October 15, 2003 for making a statement that violated the schools policy prohibiting threatening language. An IEP meeting convened on October 23, 2003

to make a manifestation determination. The team excluded the child from school without making a manifestation determination because the IEP team concluded they first required a psychiatric evaluation. At the meeting the parent was opposed to the evaluator, refused to consent to a full psychiatric evaluation, and refused to sign a "consent to evaluate" form. The parties later agreed to have Dr. Jamison conduct both the risk assessment and the psychiatric evaluation. The child has been suspended or excluded from attending school from October 15, 2003 through the end of the 2003-2004 school-year. He receives instruction at the library two hours per day. The independent high school joined with the administration of the sending public high school in requesting a due process hearing to resolve the issue of whether the LEA can override the parent's consent to release school records to the evaluator.

The parent claims follow: The child has severe asthma which results in substantial absenteeism. The school failed to program for a child with chronic asthma. The child is often in school at times he is marked absent because he is in the wrong room. The behavior intervention plan (BIP) punished unexcused absences, class tardiness and absenteeism with detention scheduled after school and on Saturdays. Failure to attend detention is the primary reason the child has disciplinary problems, including a suspension. The parent claims absences were due to illness, but the parent failed to provide adequate doctors' excuses. The LEA filed a truancy charge with the Connecticut Juvenile Court system. The parent claims she is concerned the evaluation was part of a plan to change the child's placement to another school. The parent is seeking an objective unbiased evaluation with no outside influence including that of the parent. She requests no documents be sent to the evaluator unless the evaluator requests them.

FINDINGS OF FACT:

1. There is no dispute the student is identified as a student requiring special educational and related services pursuant to the Individuals with Disabilities Education Act 20 U.S.C. Section 1400 *et seq.*, ("IDEA"), 34 C.F.R. § 300.7 (a) and Conn. Agencies Regs. § 10-76 a-1 (d).
2. A psychological evaluation dated February 4, 2002 concludes the child has a mental deficiency, but cautions the results may be unreliable and suggests the results of previous evaluations might provide a better measure of the child's abilities. (Exhibit B-3, B-7)
3. The student attends an independent high school serving seven towns including the sending public high school. For purposes of the decision both the independent high school and the sending public school shall be identified as the local educational agency. (Testimony, Independent School Dir. of Pupil Services)
4. The child was excluded from the LEA school effective October 15, 2003 for making a statement that violated the school's policy prohibiting threatening language. At an IEP meeting convened on October 23, 2003 the team excluded the child from school and provides two hours tutorial per day. The team, with the exception of the parent, concluded they required a psychiatric evaluation before they could make a manifestation determination. The team believes the child has an undiagnosed disability since he is not having success with his program. His

attendance record shows 47 absences, 70 times tardy and 35 disciplinary events last year. In the short period of time the child attended school for the 2003-2004 school-year he had 16 absences from the start of the year until October 15, 2003. The child's physician agrees the child had a lot of illness at the start of the 2003-2004 school-year. (Exhibit B-25, B-31, Testimony, Independent School Dir. of Pupil Services)

5. At the IEP meeting on 10/23/03 the parent refused to sign a consent for record release and wanted the risk assessment performed by another evaluator. The parent later agreed with the school team the evaluator would be Dr. Jamison. Presently, the sole unresolved issue is whether or not the school has authority to forward school records without the parent's signed release. The consent to evaluate form which contains the release of records has not been signed. (Exhibit HO-1, Testimony, Independent School Dir. of Pupil Services)
6. The parent claims she was asked to sign a release for the school to commission a risk assessment, a step required before the child could be readmitted to school. The parent claims, when she requested a replacement copy of the "Consent to Evaluate Form", it was not the same consent form she carried with her from the meeting on October 23, 2003. The record of the October 23, 2003 meeting clearly indicates the team intended to get consent for a psychiatric evaluation, as well as, the risk evaluation. The parent did not proffer any evidence that the notice of the 10/23/03 meeting was inadequate. The parent states the evaluator now selected to conduct the psychiatric evaluation and risk assessment is agreeable but believes the school records and transmittal letter will bias the evaluator. To the extent the consent form contained arrows and stricken lines it is concluded the changes reflected the negotiation and the parent understood what actions were being considered, when discussing the consent to evaluate. (Exhibit P-8, B-14, B-15, Testimony, Parent)
7. The Director of Pupil Services states communication with the family is poor. There is no answering machine. The parent states they moved a telephone number to internet lines and provided the school with a new number for reaching the family. The parent testified she previously provided the telephone number to Terry Bruce, at an IEP meeting. Both parties are responsible for the poor communication. (Testimony Independent School Dir. of Pupil Services, Testimony, Parent)
8. The child has severe chronic asthma and has a long history of absenteeism. The parent's testimony and the IEP documents indicate the IEP team discussed the issue of asthma and the impact of the child's illness on his education on many occasions. The child was absent 35 days in 2001, all excused. He was absent 27 days in 2001-2002 school, fourteen are unexcused and 15 times he was tardy. In the 2002-2003 school-year the child had 43 absences and was tardy 16 times. The school administration is not persuaded the child's asthma is the sole source of his absenteeism and referred the child to the juvenile court for truancy and suspended the child for failure to attend detentions after school and on Saturdays. The parent

stated she was not able to provide transportation to Saturday suspension. (Exhibit B-1, B-3, B-13, b-14, B-22, B-23, B-25, Testimony, Parent)

9. The parent testifies many of the tardy dates are in dispute and claims the child was present in school and lost or confused about where he was supposed to be in the building. The parent states the child takes the maximum of asthma medication for his age. The parent admits she did not provide doctors' excuses for some of the absences. The school staff states the parent should be permitted to provide supplementary information to the evaluator. Exhibits B-22, b-23, B-25 Testimony, Parent)
10. The parent testifies tutoring has been inconsistent. During one period, there were 37 days the student did not have a tutor available. One tutor had triplets and another child; she did not provide consistent tutoring and brought one of her children with her occasionally for tutoring sessions. The school did not provide transportation to the tutoring site, located at the public library. The child had difficulty finding the tutor in the library. One tutor told the parent he was not provided information that the student had disabilities. The parent testified transportation was a problem and she expended \$16 per trip to send the child for tutoring at the public library during the time he was excluded from school. The parent spoke with one tutor who had no information about the child's identification as a special education student. (Exhibit B-14, B-18, Testimony, Parent)
11. The school records include references to a Behavior Intervention Plan (BIP). The parent is concerned about a BIP for a 16 year old male which rewards compliant behavior with coupons for ice cream. The 2/11/04 Manifestation Determination document indicates the parent requested the behavior intervention plan not be used, but the documents fail to specify what BIP modifications are to be implemented. The BIP so far as it is reflected by the records presented at hearing needs to be modified. (Exhibit P-1 p.10, Testimony parent)
12. A response to the parent's complaint made to the State Department of Education, dated January 22, 2004, addressed issues and corrective actions for the LEA's failure to complete a manifestation determination at the October 23, 2003, IEP meeting. A manifestation determination was made at the February 11, 2004 meeting. The manifestation determination resulted in a finding the child's actions are likely a manifestation of his disabilities. The LEA needs a psychiatric evaluation and risk assessment so they can properly program for the child. (Exhibit B-14, B-18)
13. The parent claims the IEP meeting which convened on February 11, 2004 was not a proper meeting. The issue was not fully addressed in the hearing which is limited to the stated issues for hearing set forth in the statement of issues. (Exhibit B-18, H.O.-1)

14. The “Draft Transmittal Letter”, to be sent to Dr. Jamison, (Exhibit B-33) is a source of disagreement for the parties. The parent disagrees with including IEP documents from the 2001-2002 school-year. The parent is concerned the document contains statements which are unfavorable towards her son and intended to lead the evaluator to conclude the child should not be sent to the independent high school. As early as June 2, 2003 the school team discussed finding alternative placements the child. In April, 2002 the team changed the child’s identification from learning disabled to intellectually disabled. The 2001-2002 IEP is properly included as a record; there are other ways to dispute placement issues without disrupting the evaluation process. (Exhibit B-7, B-13, B-33, Testimony, Parent)
15. The parent is seeking an objective unbiased evaluation with no outside influence including the influence of the parent. She requests the documents sent to the evaluator to conduct a risk assessment of the child be limited to the documents the evaluator requests. (Testimony, Parent)

CONCLUSIONS OF LAW

1. The student is identified as a student with disabilities pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1401 (1997), 34 C.F.R. § 300.7(a) and Conn. Agencies Regs., Section 10-76a-1(d).
 2. The law provides at 20 U.S.C. § 1414(a)(2)(A) that a local educational agency (LEA) must ensure reevaluation of a child with a disability is conducted if conditions warrant a reevaluation or the child’s parent or teacher requests a reevaluation. 20 U.S.C. § 1414(a) (2) (B) makes the procedures and additional requirements of subsections (b) and (c) of section 1414 applicable to reevaluations.
 3. The LEA shall provide notice to the parent in accordance with subsections (b)(3) and (b)(4) of section 1415 of this title which describes any evaluation procedures such agency proposes to conduct, 20 U.S. C. § 1414(b)(1). The LEA must comply with the procedural safeguards outlined in 34 C.F.R. § 300.504 and parental consent requirements of 34 C.F.R. § 300.505. There is no proffer of evidence the procedural requirements were not met.
 4. 20 U.S.C. §1414(a) (1)(c)(ii) provides the LEA may pursue evaluation if the parent refuses to consent to the reevaluation by utilizing the mediation and due process procedures under Section 1415, of this title, except to the extent it is inconsistent with state law relating to parental consent. Conn. Agencies Regs. § 10-76h(d)(1), provides if the parent refuses consent, a hearing officer may order an evaluation without the consent of the parent.
- IDEA at 20 U.S.C. § 1414(c), and 34 C.F.R. § 500.533 has additional requirements for evaluations and reevaluations and provides the reevaluation must review existing evaluative data on the child including evaluations and information provided by the parents of the child, current classroom based assessments and observations, and

teacher and related services providers observations; and on the basis of that review identify what additional data, if any, are needed to determine whether the present levels of performance and educational needs of the child or whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate as appropriate in the general curriculum.

The Conn. Agencies Regs. §10-76d-9(a) provides "...The evaluation 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."

The evaluator needs information in order to conduct a comprehensive review and make recommendations. The provisions of 20 U.S.C. § 1414(c) and Conn. Agencies Reg. §10-76d-9(a) state additional requirements for evaluations and reevaluations. It is clear the school records outlined in the draft transmittal letter (Exhibit B-33) are all appropriate for the evaluator to consider when making recommendations for the child to succeed in school.

The parent believes the IEP from the 2001-2002 school-year (Exhibit B-30) is not necessary and is hand-picked to influence the evaluator to change the child's placement. The IEP contains the child's most recent psychological evaluation, therefore, it is a necessary record. The information from the treating physician is relevant, but should be supplemented by direct information from the mother regarding the child's medication levels. The parent should provide information that she has observed and should be given ample time to provide supplementary data for the evaluator to consider when preparing a report. The evaluation should be comprehensive. The parent should understand the way to properly evaluate the child's needs is not to restrict the information for the evaluator's consideration but to provide as much supplementary information as necessary for the evaluator to weigh the factors which impact on this child's ability to benefit from his special education.

5. Even though the parent has not signed the consent for evaluation the core of the dispute is what information should be forwarded to the evaluator. The parent agrees both a risk evaluation and a psychiatric evaluation should be completed. The school requires and has to fulfill their responsibilities not only to the student, to provide him with an appropriate educational program, but to provide for the safety of others who attend school with the child

6. The draft transmittal letter (Exhibit B-33) so far as it lists records and makes recommendations for evaluation appears to be appropriate. Any statement about the circumstances of the child's exclusion from school should be investigated independently by the evaluator by speaking directly with the student and the teacher involved. The exact words that were stated are in dispute and the evaluator should not obtain information about the words through hearsay statements. Any summary

of the child's statement shall be excluded from the transmittal letter, particularly as it appears in the third full paragraph of the letter.

FINAL DECISION AND ORDER:

1. A risk assessment and psychiatric evaluation shall be performed by Dr. Jamison without the need for a signed consent to evaluate.
2. The list of records contained in the draft transmittal record (Exhibit B-33) with the summary of threatening language deleted shall be forwarded to Dr. Jamison. The parent shall be permitted to speak with the evaluator to provide additional information. The board shall be permitted to speak with the evaluator to provide additional information; and shall provide contact information for the teacher who heard the child's statement which resulted in the exclusion from school.
3. Dr. Jamison shall speak directly to the student and teacher for the purposes of making any conclusion about the threatening language uttered by the student for the purpose of completing the risk assessment.
4. In addition to the requests contained in the draft transmittal letter the evaluator shall make recommendations for any additional evaluations necessary to create an appropriate program for the child including an age appropriate behavior intervention plan and evaluation of the impact of the child's medical condition on his ability to attend and succeed in school.