

STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION

Orange Board of Education v. [Student]

Appearing on behalf of the Board: Attorney Craig S. Meuser  
Shipman & Goodwin LLP  
One American Row  
Hartford, CT 06103

Appearing on behalf of the Parents: Attorney Sally R. Zanger  
Klebanoff & Phelan, P.C.  
433 South Main Street, Suite 102  
West Hartford, CT 06110

Appearing before: Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**ISSUE:**

Whether the Board is entitled to a medical evaluation of the Student by a licensed physician of its choosing as part of the Student's reevaluation.

**PROCEDURAL HISTORY:**

The Board requested this hearing on March 5, 2003. The prehearing conference was held on March 12. The Parents filed a Motion for Summary Judgment/Motion to Dismiss, which was denied at the first day of the hearing. The hearing was held on April 7 and April 16. The Board's witness was Eleanor Cruz, the Board Special Services Director. The Parent's witness was the Father.

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).

**SUMMARY:**

The Parents previously withdrew the eight year old Student with multiple disabilities from school to home-school him. As of the hearing, the Student was not yet re-enrolled in the Board schools. The Parents recently requested that the PPT convene to re-evaluate the Student, and agreed to several evaluations by the school psychologist, the speech pathologist, the physical therapist, the occupational therapist and the vision specialist. The Parents did not consent to a medical evaluation of the Student, although the Father noted that medical issues figure prominently throughout the Student's day, and it is the Father's opinion that the Student would be at medical risk if he were educated in a school setting. The Student sustained a major seizure since the last triennial evaluations, which greatly diminished the Student's abilities. The Board brought this due process hearing request to override the lack of parental consent to a medical evaluation by a licensed physician of the Board's choosing as part of the Student's reevaluation.

**FINDINGS OF FACT:**

1. The Student is eight years old, and has been identified as eligible for special education services at the Board schools since the family moved to Orange in fall 1997 when the Student was three years old. [Testimony Father, Exhibit B-6] He is currently designated as visually impaired and multihandicapped. [Exhibit B-16]
2. The Student has been diagnosed with an unspecified neuromotor disability, a seizure disability, and a visual disability. [Exhibits B- 9, B-11]
3. At the Planning and Placement Team ["PPT"] meeting in February 2000, the team planned the Student's triennial evaluations. [Exhibit B-8] These evaluations were completed with the Parents consent. [Exhibit B-7]
4. During the spring 2000 the speech-language pathologist noted in her evaluation that the Student could recognize his name and inconsistently follow simple one step commands. The speech-language pathologist noted that he was attempting to use a photo schedule board in the classroom with heavy prompting. [Exhibit B-9]
5. The spring 2000 ACES collaborative assessment team noted that the Student had made steady gains in the area of cognitive, language, social, self-help and motor skills. Attention span and eye contact increased, and the Student made demonstrated progress with expressive and receptive language skills. At that time, the Student had made progress in self-feeding by using a spoon with his lunch food, and drinking from a cup and using a straw. He had also progressed in his fine motor skills, such as in grasping/releasing various sized objects and putting them into containers. According to the collaborative assessment team, the Student's gross motor skills

had improved in the area of overall balance and postural control. This enabled the Student to explore and use the playground equipment with close supervision. [Exhibit B-10]

6. In summer 2000, when the Student was 5 years old, he attended the Area Cooperative Educational Services ["ACES"] Village program as part of his Individualized Education Program ["IEP"] determined at the Planning and Placement Team Meeting ["PPT"] on June 22, 2000. [Testimony Father, Exhibit P-13]
7. During the summer program at ACES Village School, the Student was progressing consistent with the spring 2000 team assessment. [Exhibit B-10] The Student could feed himself, use a rollator, and communicate using a nonverbal system. [Testimony Father]
8. At the Student's home during the evening of July 31, 2000, the Student spiked a temperature and had a seizure that lasted for 45 minutes. The Student was transported to the hospital by ambulance, and remained in the hospital for almost one month, which included time in the pediatric intensive care unit when the Student was in a coma. After the Student's seizure, the Student's abilities were greatly diminished, including his ability to use his arms, hands, legs, hold up his neck and eat. [Testimony Father]
9. In the fall 2000, the Student's IEP was revised so that the Student could receive homebound instruction which included physical therapy, occupational therapy, speech and language services and special education instruction. The IEP was implemented at the Student's home as he had recently sustained a major seizure. The notes from the PPT meeting indicate that the placement would be homebound until the Student was well enough to come to school. [Exhibit P-15]
10. In November 2000, the PPT planned the Student's transition to a partial school based program [P-17], which was planned to be implemented after the PPT meeting of December 7, 2000. [Exhibit P-22] The Student only attended a couple of weeks of the partial program at ACES Village from January 2001 to June 2001. The Board encouraged the Parents to have the Student attend the program at ACES Village, but the Parents requested that the Student not attend the program and continue with homebound instruction and services only. [Testimony Ms. Cruz] The Father indicated that the attendance problems during this time were due to the Student catching colds and experiencing medical issues, such as the Student's sleeping problems, constipation and reflux. [Testimony Father] In September 2001, the Board requested that the Parent's provide medical authorization for the Student's need for homebound services. [Exhibit P-30]
11. In December 2001, the Parents notified the Board that they were withdrawing the Student from school and commencing a program of home-schooling. [Testimony Ms. Cruz, Exhibit B-12]
12. The Director of Special Services notified the Parents that the application for Instruction of Student at Home was approved by the Superintendent, indicated that a special education program would still be made available to the Student, and urged the Parents to contact her to

confirm the date and time of the upcoming PPT meeting. The Director also notified the Parents that with the approval of the request for instruction at home, the Student was no longer a registered Orange Public Schools student. Therefore, physical therapy and speech services were discontinued effective January 21, 2002. [Testimony Ms. Cruz, Exhibit B-13]

13. The Parents objected to the PPT proceeding as the current home-schooling educational setting of the Student did not involve the Board. [Exhibit B-14] The Board indicated that it would proceed with the PPT so the team could document that an appropriate program was offered to the Student. [Exhibit B-15]
14. At the February 12, 2002 PPT meeting, which was not attended by the Parents, the Board members of the team reiterated that the Student was eligible for services and that the ACES program was appropriate for the Student's extensive needs. Prior to the PPT the Director of Special Services had contacted the Student's physician, who had noted that there was no compelling medical reason for the Student not attending school. The Parents were aware of the PPT meeting, and had indicated by letter and by facsimile that they would not attend the PPT meeting. [Testimony Ms.Cruz, Exhibit B-16]
15. By letter dated June 10, 2002, the Parents instructed the Board not to contact the Student's pediatrician. [Exhibit B-16]
16. The PPT reconvened in June 14, 2002 to conduct an annual review, offer a program to the Parents and plan a reevaluation of the Student. The Father attended this PPT meeting. The Board members of the PPT noted that the Student is due for a triennial evaluation prior to May 25, 2003 if the Student re-enrolled in the Orange Public School system. At the PPT meeting, the Board noted that it wishes to continue a collaborative working relationship with the Parents and further noted that it would schedule a PPT if the Parent requested one to discuss program needs. At this time, the Parents continued to home-school the Student. The Board noted that parental permission was required for triennial evaluations if the Parents chose to enroll the Student in the Orange Public School system. It was noted that the present levels of education performance strengths could not be assessed as evaluation updates were needed. The concerns/needs of the PPT at that time continued to be the Student's overall health issues and the significant developmental delays. The PPT noted that a health update was needed from the pediatrician at that time. Goals and objective could not be drafted without an update on current functioning and without parental input. [Exhibit B-17]
17. In September 2002, the Parents renewed their Notice of Intent/Instruction of Student at Home. Receipt of the home-schooling notification was acknowledged by the superintendent of schools, and no opinion was rendered as to the appropriateness of the planned program. [Exhibit B-18]
18. In January 2003, the Parents requested a PPT meeting, which was held on February 14, 2003. [Exhibit B-19] At the time of this PPT meeting, through the dates of this hearing, the Parents

had not yet re-enrolled the Student in the Orange Public Schools. [Testimony Father, Exhibit B-20]

19. At the February 14, 2003 PPT, the Parents requested evaluations of the Student. The Parents consented to several evaluations, including evaluations by the special education teacher, the school psychologist, the speech clinician, the physical therapist, the occupational therapist and a vision specialist. The Parents refused to consent to an evaluation by a physician. The Parents also would not consent to the Board's request to contact the Student's physicians. The Board reiterated its request to conduct an independent evaluation by a physician of its choice. The Parents denied this request. [Exhibit B-20]
20. In January, 2003 the Parents provided the Board notes from two physicians. [Exhibit P-1, P-2] The notes are not sufficiently specific for the PPT to develop an IEP for the Student, nor could they be used by other evaluators who require medical information to complete their evaluations. The notes do not set forth any comprehensive information but merely state general conclusions such as "His medical disorders create problems with his being able to attend school on a regular basis," [Exhibit P-2] and that the Student is "facing extreme difficulty due to a severe sleep disturbance and debilitating gastrointestinal concerns." [Exhibit P-1] The Director noted that the PPT would need several questions to be answered in a comprehensive evaluation of the Student. The evaluation should include (1) how the seizure disorder can be accommodated, (2) to what degree the gastrointestinal concerns and sleep issues have changed since the Student was in school when these concerns were accommodated and how they need to be addressed in the Student's program, (3) specific identification of the Student's physical limitations and abilities, (4) information on the Student's endurance, (5) information on safely moving the Student, (6) to what degree the medical issues impact the ability to assess the Student's level of functioning, (7) identification of the Student's ability to swallow and move muscles, (8) addressing the choking and reflux issues to assist in developing a feeding program. The evaluation would also result in determining an appropriate placement for the Student, including whether the Student is medically able or not able to attend a school setting. [Testimony Ms. Cruz]
21. The coordinator of the assistive technology evaluation being conducted at the Parents' request has noted that updated medical information is required for the assistive technology evaluation to be completed. [Testimony Ms. Cruz, Exhibit P-35] Among the medical issues that must be addressed prior to the completion of the assistive technology evaluation are: seizure precautions that would require avoidance of certain lights or monitor types, positioning/seating precautions and orthopedic precautions. [Exhibit P-35]
22. In the last triennial review of the Student in 2000, no medical evaluation was requested since the Student was attending school, and the medical concerns were being accommodated in the school setting. Since the last triennial evaluations, the Student sustained a seizure that impacted him tremendously, and the only medical information received about the Student is the two short notes from the medical providers. The Board has insufficient medical information to draft an

appropriate IEP. The medical evaluation is required for the PPT team to draft an IEP, and make placement, related services and modification decisions. [Testimony Ms. Cruz]

23. The Father testified that medical issues figure prominently throughout the Student's day. The Student is characterized by the Parents as medically fragile, which is why the Parents want him educated in the home. It is the Parent's opinion that the Student would be at medical risk if he were educated in a school setting. According to the Father, the Student has had more prominent medical issues since the major seizure in the summer 2000. The Parents and their attorney never communicated a reason for their refusal to consent to an independent medical evaluation of the Student at the PPT or prior to the hearing. In addition, the Parents did not provide the PPT with an evaluation by any of the Student's treating physicians. The Father indicated that he can see the reason for the Board's request for medical information, as quite a bit of programming for the Student involves medical issues. The Father agreed that the need for the medical information is appropriate, and that medical information would be helpful to the PPT to learn more about the health-based concerns of the Student. The Father's objection to the evaluation is that he doesn't want to subject the Student to a physician he doesn't know, and doesn't want the Student to hear the medical history repeated in front of him. No medical providers have indicated to the Parents that the Student would be undergoing too much if he had an independent medical evaluation. [Testimony Father]
24. The Student has multiple handicaps with comprehensive needs. He has significant expressive language delays, his receptive language skills are delayed and his physical delays are well documented. It is difficult to determine how his physical problems impact him, and whether and to what degree his medical conditions prohibit him from obtaining educational benefit. The PPT needs to have a comprehensive evaluation of the Student developed to put the pieces of the puzzle together. If all the pieces are not included, which includes a medical evaluation, the PPT will not get the whole picture of the child. A medical evaluation is essential to get a global picture of the Student. [Testimony Ms. Cruz]

### **CONCLUSIONS OF LAW:**

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401, et seq.
2. The Board is seeking a medical evaluation of the Student to determine the appropriate program for the Student. In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted. 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)(Emphasis Added)

3. The Board has an obligation to ensure that “the child is assessed in all areas related to the 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)(Emphasis Added)
4. It is the obligation of the PPT to review existing assessment data regarding a child and to determine whether additional information is necessary in order to program for the child as part of an initial evaluation or a reevaluation. Initially the PPT reviews existing evaluation data and identifies:

What additional data, if any, are needed to determine –

- a. Whether the child has a particular category of disability, as described in Sec. 300.7, or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
- b. The present levels of performance and educational needs of the child;
- c. Whether the child needs special education and related services, or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- d. 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 IEP of the child and to participate, as appropriate, in the general curriculum.

34 C.F.R. Sec. 300.533(a)

5. A medical evaluation is clearly necessary to complete a comprehensive evaluation of the Student. The importance of such an evaluation is undeniable for this Student who has been characterized as a medically fragile boy, who has medical issues that figure prominently in his day to day life. The Student has been home-schooled by parental choice since December 2001, purportedly because the Parents feel that the Student would be at medical risk if he were educated in a school setting. The Father has agreed in his testimony that medical information would be helpful in drafting an IEP for the student. A substantial portion of the programming for the Student is impacted by medical issues. It is unfortunate that the Parents did not consent to have the Board proceed with the medical evaluation when consent for the rest of the comprehensive assessment was given. In the absence of parental consent, it was appropriate and necessary for the Board to proceed with this due process hearing to request that a medical evaluation be ordered.
6. The Board is entitled to the requested evaluation in order to fulfill the need to have current assessment data to ascertain the child’s handicapping condition and level of functioning pursuant to 34 C.F.R. § 300.533(a)(2), to ensure that the Student is assessed in all areas related to the disability including health, in accordance with 34 C.F.R. Sec. 300.532(g), and to ensure that the Board has a complete evaluation study which shall include medical evaluations as may be appropriate in determining the nature and scope of the Student’s exceptionality, pursuant to

Conn. Agencies Regs. Sec. 10-76h-9(a) The evaluation is also appropriate since it is essential for the Board to have information concerning the child's physical condition, pursuant to Conn. Agencies Regs. Sec. 10-76h-9(a)(1) Information derived from an independent medical evaluation will be essential to drafting the IEP for the Student, and in determining placement, related services, accommodations and modifications.

7. In the absence of parental consent for evaluations, hearing officers may order special education evaluations without the consent of the parent. Conn. General Statutes Sec. 10-76h(d)(1) The federal regulations specifically indicate that when the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the Board may continue to pursue the evaluations through the due process procedures. 34 C.F.R. Sec. 300.505(b) The Board has appropriately brought such a request, and the evidence supports that the medical evaluation is necessary so that the evaluation of the Student is sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F. R. Sec. 300.532(h) The medical evaluation shall be completed.

#### **FINAL DECISION AND ORDER:**

The Board shall be permitted to conduct a medical evaluation of the Student by an appropriately licensed physician in the State of Connecticut chosen by the Board, without parental consent. The Board is not required to consult with the Parents to draft the referral questions to be provided to the physician. This does not, however, prohibit the Board from convening a PPT to draft referral questions.