

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Orange Board of Education v. Student

Appearing for the Board: Craig Meuser, Esq.
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Avon, CT 06001

Appearing for the Student: Nicole Bernabo, Esq.
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Appearing Before: Hearing Officer Scott P. Myers, M.A. (Clinical
Psychology), J.D.

FINAL DECISION AND ORDER
(October 16, 2006)

SUMMARY

By letter dated July 7, 2006 to the Department of Education's ("DOE's") Due Process Unit, the Board requested a due process hearing. As set forth more fully in the notices and scheduling orders issued in this matter and filings made by the parties in this matter, there is no dispute that, at all pertinent times, the Student was eligible to receive "special education" and "related services" pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (the "IDEA"), as amended effective July 1, 2005 by the Individuals with Disabilities Education Improvement Act of 2004 (the "IDEIA"), as well as under Connecticut's special education laws, Conn. Gen. Stat. §§ 10-76, *et seq.* There is no dispute that the District was providing special education and related services to the Student at all pertinent times during the 2005/2006 school year and that the Student's behavioral presentation had changed over the course of that year.

The District claimed that the parties had agreed that the Student would be given a psychiatric evaluation. The District sought the evaluation to clarify the causes of changes in the Student's presentation at school over the course of the 2005/2006 school year. The District sought to have the evaluation performed by an evaluator selected by the District, Michael Kaplan, MD. The District sought an order compelling the Parents to allow the Student to be evaluated by Dr. Kaplan. In their response dated July 19, 2006, the Parents claimed that they had agreed to a psychiatric evaluation but did not agree that the evaluation would be performed by Dr. Kaplan and, given the disagreement with the District over who would perform the evaluation, they subsequently arranged for a psychiatric evaluation of the Student by Gordon Weiss, MD. They claimed further that Dr. Weiss' evaluation would be completed on or about July 28, 2006 and that the

evaluation requested by the District would be unnecessary in light of Dr. Weiss' evaluation.

By agreement of the parties, the Pre-Hearing Conference ("PHC") convened by telephone on July 25, 2006. Counsel for the Board (Mr. Meuser) and for the Parents (Ms. Bernabo) participated. Dr. Weiss' report was not yet available. Until Dr. Weiss' report has been reviewed and considered by the District, it remained unclear whether and to what extent the District would desire to proceed with its claim. Counsel for the Parents indicated that the Parents may wish to assert claims of their own based on the results of Dr. Weiss' evaluation and some time was spent at the PHC discussing the procedural mechanics should the Parents determine to commence a due process proceeding. The Hearing Officer advised of his view that since any such action by the Parents would likely be consolidated with this matter if this matter was pending at the time, it would be most efficient and least burdensome for the parties if the parties to agree that all issues concerning the Student could be resolved in this one proceeding.

An initial scheduling order was entered on July 27, 2006, identifying September 20, 2006 as the date for issuance of the final decision and order, establishing procedures and dates for submission of witness lists and records, identifying an August 25, 2006 date for a second PHC and identifying initial hearing dates of August 31 and September 6, 2006. These dates were selected to allow the parties to convene a PPT to review the results of the evaluation by Dr. Weiss.

A second PHC was convened at the request of the parties on August 9, 2006. Counsel for the Board and for the Parents participated. The parties reported that the planned August 31, 2006 PPT to review Dr. Weiss' evaluation may have to be delayed. By agreement of the parties, the date for issuance of the final decision and order was extended to October 23, 2006, new dates for submission of records and witness lists were established, another PHC was scheduled for October 4, 2006 and new hearing dates were established for October 11 and October 18, 2006.

The PHC reconvened on October 4, 2006. Counsel for the District (Mr. Meuser) and counsel for the Parents (Ms. Bernabo) participated. The parties reported that a PPT was convened on September 5, 2006 to review the results of Dr. Weiss' evaluation and a neuropsychological report prepared by Gary Isenberg, Ph.D. The District correctly notes that this was not a "resolution meeting" within the meaning of IDEIA. However, the parties at that PPT discussed potential compromises of the District's request that the Student be evaluated by Dr. Kaplan. The parties had not, however, been able to resolve their disagreements. The parties discussed the issue being raised by the District in this matter, which was framed as follows:

Whether the Hearing Officer should enter an order that the Student be made available for a psychiatric evaluation by Michael Kaplan, M.D., and, if so, what should the scope/format of that evaluation be?

The phrase “scope/format” is intended to refer to the “full” psychiatric evaluation as initially requested by the District during the 2005/2006 school year or something less than a “full” psychiatric evaluation.

The parties agreed that the Parents may present for resolution in this hearing, without the need to commence a due process proceeding of their own, issues regarding Dr. Weiss’ evaluation. The parties are to be commended for their flexibility and willingness to accommodate the Hearing Officer’s suggestion in this regard, as it appears inevitable that the Parents would commence a due process hearing to address their issue and that testimony and evidence pertinent to the District’s issue stated above is intimately intertwined with the testimony and evidence pertinent to the Parents’ issue regarding Dr. Weiss’ evaluation.

The issue ultimately presented for resolution by the Parents in this proceeding was defined as whether the Parents are entitled to reimbursement for the costs of the evaluation performed by Dr. Weiss. The Parents statement of issue is set forth more fully in a filing dated October 6, 2006.

The parties appeared for hearing on October 11, 2006. At the outset, and before the record was opened, the parties requested a brief recess to determine whether they could reach a settlement. The parties engaged in settlement discussions for approximately 90 minutes, at which point they reported that they had reached a settlement. Their settlement provided, among other things, that the District was withdrawing its request for due process on the issue set forth above with prejudice and that the Parents were withdrawing their “request” for due process on the issue set forth above without prejudice.

FINAL DECISION AND ORDER

This matter is DISMISSED.