

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Glastonbury Board of Education

Appearing on Behalf of the Parents: Andrew A. Feinstein, Esq.
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Bloomfield, CT 06002

Appearing on Behalf of the Board: Michelle Laubin, Esq.
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Milford, Ct 06460

Appearing Before: Attorney Justino Rosado, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the Parents' evaluator be permitted to perform an all day observation of the Student at the Board's school?

SUMMARY AND PROCEDURAL HISTORY:

This matter was presented as a contested matter pursuant to Connecticut General Statutes (CGS) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

The Student is a young man who had been identified as Other Health Impaired and a student entitled to receive a free and appropriate public education ("FAPE") as defined in Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a.

The Parents' rejected the determination of the PPT concerning the eligibility of the Student as a student requiring special education and related services. The Parents had conducted an independent neuropsychological evaluation which the Board agreed to pay. The Parents, at a PPT to review the evaluation of the Student, requested that the evaluator be permitted to conduct an all day observation of the Student at the Board's school. The Board refused the Parents' request. The Parents filed for Due Process requesting that the evaluator be permitted to conduct the observation.

The Board received notice of the due process request on or about April 3, 2008. On April 3, 2008, a Hearing Officer was appointed. The parties agreed to a May 16, 2008 hearing date. At the April 11, 2008 telephonic prehearing conference, the parties waived the resolution meeting and decided to proceed directly to Due Process. The Board requested that the matter be dismissed alleging that the Hearing Officer did not have subject matter jurisdiction to hear the issue requesting an observation, as it did not pertain to the "identification, evaluation or educational placement or the provisions of FAPE." The Parents filed a timely objection and a briefing schedule was determined.

The request for due process complaint alleged that the Student's deficits impacted his ability to receive FAPE and that an observation of the Student by the independent evaluator was necessary in order for the PPT to decide the Student's eligibility.

A key element of the charge and the issue of the motion was "the authority [of the hearing officer] to confirm, modify, or reject the identification, evaluation". Clearly the ability to modify an evaluation is within the purview of a hearing officer. What composes an evaluation is a question of fact which cannot be determined without testimony. Since a hearing officer can decide whether or not evaluations are required, so is the hearing officer's ability to modify an evaluation which can include an observation.

The Board's motion was denied.

In a letter to the Hearing Officer dated May 8, 2008, the Board agreed to permit the Parents' evaluator to conduct the requested observation. The Board requested that the due process hearing be dismissed with prejudice. The Parents' filed a timely objection.

At the 1st day of hearing the Board reiterated their decision to allow the evaluator to do an all day observation of the Student on Monday May 19, 2008 and to pay for the observation up to \$1500.00. The Parents' continued raising their concern that if the matter was dismissed the Board might not allow the evaluator to conduct an evaluation without restrictions and not pay for the observation. A May 21, 2008 hearing date was agreed upon in order to allow the observation to take place. The Parents still objected to the Hearing Officer not issuing an order to compel the observation and Board payment of the observation. On May 19, 2008 the Parents' attorney informed the Hearing Officer that the observation had taken place but that the matter was not moot. I do not agree. The matter as presented by the Parents was to compel the Board to allow an observation of the Student at the Board's school. The Board has agreed to the observation and according to the email from the Parents' attorney the observation had taken place.

The Parents' attorney cited the Supreme Court, in *City of Mesquite v. Aladdin's Castle, Inc.* 455 U.S. 283, 102 S.Ct. 1070 (1982) where the Court applied the "well settled" rule "that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Id.* At 289, 102 S.Ct. at 1074 and that without an order, there was nothing to compel the Board to proceed with the observation.

If one continues to read *City of Mesquite v. Aladdin's Castle, Inc.* 455 U.S. 283, 102 S.Ct. 1070 (1982), the Supreme Court in *Footnote 11* cites its holding in, *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953), which stated that a case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. *Id.* at 633. In the matter before me the Board has allowed the unrestricted observation to go forward and as to payment, the Board has agreed to fund the evaluation. The wrongful denial by the Board of the evaluator to observe the Student cannot be reasonably expected to occur since the observation has taken place. Therefore the matter is moot.

The date for the mailing of the final decision and order is May 27, 2008.

FINAL DECISION AND ORDER:

THE MATTER IS DISMISSED WITH PREJUDICE.