

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Farmington Board of Education v. Student

Appearing on Behalf of the Parents:

Pro Se

Appearing on Behalf of the Board:

Attorney Julie Fay  
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One Constitution Plaza  
Hartford, CT 06103-1919

Appearing Before:

Attorney Justino Rosado,  
Hearing Officer

**ISSUE:**

Should the board be entitled to conduct comprehensive evaluations of the Student as recommended by the PPT without the Parent's consent?

**FINAL DECISION AND ORDER**

**SUMMARY:**

The Student has not been identified as entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At a PPT meeting, the Board requested consent to conduct comprehensive evaluations to determine if the Student should be identified as a student entitled to receive special education and related services. The Parent denied the Board's request for consent and the Board filed for due process.

**PROCEDURAL HISTORY:**

This matter was heard as a contested case 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 Administrative Procedure Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

A hearing was requested by the Board on May 16, 2011. An impartial hearing officer was appointed on May 16, 2011 and a pre-hearing conference was held on May 23, 2011. A hearing date of June 15, 2011 was chosen.

The Parent did not attend the due process hearing; attempts to contact the Parent were not successful. After the hearing was concluded, the Parent telephoned the Board's attorney at approximately 3:40 pm on June 15, 2011, confirming that she had received a telephone call about the hearing. (H.O.<sup>1</sup>-4). The Parent did not call the hearing officer or send any type of correspondence giving a reason why she did attend the hearing or request to reopen the hearing or for the Parent to request to reopen the hearing to present testimony. At the request of the Board, in order to accommodate the filing of a final order and decision after the hearing dates, the date for the mailing of the Final Decision and Order was extended. The mailing date for the Final Decision and Order is July 30, 2011.

This Final Decision and Order sets forth the Hearing Officer's summary, procedural history, findings of fact and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. SAS Institute Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and Bonnie Ann F.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

#### **FINDINGS OF FACT:**

1. The Student has not been found eligible to receive special education and related services; he is currently receiving support and accommodations through a 504 Plan due to hearing loss. (Testimony of Classroom Teacher)
2. The Student was first referred to a PPT on 5/19/2005 because he had been physical toward his teachers and had some tantrums. The Student also tended to bolt when he became agitated. (Board Exhibit<sup>2</sup> -3)
3. The PPT considered his eligibility for special education and related services. Two PPTs were convened: one to request evaluations and the follow up PPT to review the evaluations. The Student was not found eligible for special education but a 504 Plan was developed. (B-6, B-9)
4. In November 2006 an emergency PPT meeting was convened because of the Student's disruptive behavior. The team recommended evaluations including a psychiatric evaluation. The Parent was not present but gave the team permission to convene. The Parent did not give permission for the team to conduct the evaluations. The special education teacher collected data as to the Student's behaviors and to identify a behavior management plan best suited for the Student. (B-24, B-27, B-28)

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<sup>1</sup> Hearing Officer exhibits will be noted by "H.O." followed by the exhibit number

<sup>2</sup> Hereinafter Board Exhibits will be referred to with "B" followed by the exhibit number.

5. The Parent consented to an educational evaluation of the Student to be conducted by the special education teacher. This evaluation could only go forward if the Parent was allowed to observe. The Parent was present in the room throughout the evaluation. (B-30, B-31)
6. In May 2007 the Student engaged in various inappropriate behaviors with another Student. The other student stated she felt uncomfortable with the Student's behavior. The Student's behavior plan was reviewed and adjustments were made to address the issue. (B-33)
7. In May 2008, the Student was once again referred to a PPT. The PPT met and the Parent was not present. The board attempted to have the Parent participate but the Parent would not participate in the PPT. The team recommended psychiatric, psychological, academic, speech and language and occupational evaluations of the Student. A follow up PPT was convened in June, the Parent was not present. The team recommended closing the PPT process at this time due to the Parent's denial of consent to evaluate and her agreement to instill positive changes with the Student. (B-41, B-42)
8. In December 2008, the Student was suspended for 2 days because he hit a staff member. The Board continued to be concerned with the Student's impulsivity, poor judgment and lack of self-control. (B-48)
9. In the 5<sup>th</sup> grade, the Student continued to receive 504 accommodations for his unilateral hearing loss. The Parent requested that the Student's social work services be discontinued. (Testimony of Director of Pupil Services)
10. In the 5<sup>th</sup> grade, the Student met end of year standards but his behavior detracted from his learning and he needed to be reminded about what is appropriate. The Student had two in-school suspensions for inappropriate language. (B-60)
11. In October 29, 2010, Dr. Paul Dworkin, through the Parent, sent a letter to the Board with recommendations based upon an assessment he had made of the Student. The Board asked the Parent for a copy of the assessment but the Parent was not willing to provide a copy of the Consultation report. The Board was given permission to speak with the doctor. The doctor followed up the contact with a letter to the Board stating that the Student's behavior warranted a formal school-based assessment and that he had made a referral for a psychiatric evaluation of the Student. There was no follow up by the Parent of the Psychiatric evaluation. (54, B-59, B-81 pg. 2, Testimony of Direct of Pupil Services)
12. On or about December 16, 2010, a PPT meeting was held in response to Dr. Dworkin's October 29, 2010 letter. The Parent received notice of the PPT but did not attend. The team agreed with Dr. Dworkin and recommended a Psycho-educational Evaluation of the Student and also agreed to implement a Behavior Management Plan based on his recommendations and those of the school team.

The team agreed to send home, on Fridays, a weekly behavior management chart of the Student's daily behavior. (B-62, B-77, Testimony of 6<sup>th</sup> Grade Teacher)

13. The Parent would not give the PPT team permission to conduct a Psycho-educational Evaluation of the Student. (Testimony of Assistant Principal)
14. The Parent, in various emails sent to the school, showed concern about the Student's behavior. The Parent considered any questions about the Student's out of school activities to be an invasion of their privacy and an act of harassment. The Student was instructed to respond, "mind your own business". The Parent requested copies of the Student's behavior plan and copies were sent home in the Student's backpack. The Parent revoked the permission to contact Dr. Dworkin. (B-81 page 16, B-81, Testimony of Assistant Principal)
15. On or about January 27, 2011 the Student received an in-school suspension for inappropriate language in class. The Student's school transportation was changed to a van due to inappropriate and disruptive behavior on the bus. In his 6 years of school attendance, the Student has managed to receive a total of 26 in-school and out-of-school suspensions. (B-88 page 5, B-77)
16. On March 31, 2011 a PPT was held to evaluate the Student's eligibility for special education and related services. The Parent was notified and called but did not attend the meeting. The PPT continued the Student's 504 Plan and recommended a comprehensive evaluation to include: (1) language evaluations; (2) academic achievement; (3) classroom observations; (4) functional behavioral assessment; (5) psychiatric developmental history and social, emotional, behavioral and cognitive assessments. The team sent a letter to the Parent informing her of the team's decision. The Parent did not give permission to perform the evaluations. (B-65, B-67 Testimony of Assistant Principal)
17. The comment notes from the Student's 1<sup>st</sup> grade to 5<sup>th</sup> grade records demonstrate that the Student is capable of doing the work and maintaining good grades. The Student's CMT scores were getting lower even though the Student had good recall and capable skills. The Student began the 6<sup>th</sup> grade school year obtaining standard level in his core courses; he is not currently receiving standard grade level in any of his core courses. (B-79, B-80, Testimony of 6<sup>th</sup> Grade Teacher)
18. The assistant principal was concerned about the student's ability to function in school, his aggressive behavior, and also his inappropriate language. The Student was suspended for sexually harassing a female student. (B-75, Testimony of Assistant Principal, B-90)
19. The Student has a negative impact on his peers. The Student's teacher has had to change his methodology in class because of the Student's impact on his peers. During his 6<sup>th</sup> grade year, the Student has had 9 absences, 8 tardies, one out-of-

school suspension and 3 in-school suspensions.(Testimony of 6<sup>th</sup> Grade Teacher, B-86)

**CONCLUSIONS OF LAW and DISCUSSION:**

1. The Student has not been found eligible to receive special education and related services and is currently receiving support and accommodations through a 504 Plan due to hearing loss.
2. IDEA has established an affirmative obligation for all Boards of Education to identify, locate and evaluate all students whom they suspect of having a disability. C.F.R. § 300.111 Child find. (a) General. (1) The State must have in effect policies and procedures to ensure that-- (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.
3. Regulations of Connecticut State Agencies expand on the IDEA's child find requirements and require Boards of Education in Connecticut to make "...prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance." R.C.S.A. §10-76d-7
4. Written parental consent shall be obtained prior to initial evaluation, reevaluation, initial placement or private placement of a child who requires or may require special education and related services. R.C.S.A. §10-76d-8. If a parent denies consent to the board to conduct an initial evaluation of a student, a hearing officer may order special education evaluation or placement without the consent of such parent, guardian, pupil or surrogate parent. Conn. General Statute §10-76h(d)(1).
5. In this case, the Student's behavior for the last 6 schools years has demonstrated an extensive pattern of defiant behavior and an impulsivity that places school staff and students in danger. The Parent recognizes the Student's behavior but wraps herself and her son in the mantle of privacy that inhibits the Board from planning an appropriate education for the Student. (Findings of Facts B-2, 4, 6, 8 , 9, 10 & 14)
6. The Parent had the Student evaluated by Dr. Dworkin, but refused to share the complete evaluation with the Board. In a phone conversation with school personnel, Dr. Dworkin recommended a Psycho-educational evaluation of the Student. The strong compelling evidence presented indicates that there are genuine concerns regarding the emotional status of the Student. The Student is at a critical juncture in his educational journey and needs to be given all the necessary tools to be successful in life. The Board has provided substantial reasons to evaluate the Student. The Board cannot plan a proper educational program for the Student without evaluations and assessments. The Board shall be permitted to conduct the evaluations as

recommended in the March 31, 2011 PPT: (1) language evaluations; (2) academic achievement; (3) classroom observations; (4) functional behavioral assessment; (5) psychiatric developmental history and social, emotional, behavioral and cognitive assessments.

**FINAL DECISION AND ORDER:**

1. The Board shall be permitted to conduct the evaluations as recommended in the March 31, 2011 PPT: (1) language evaluations; (2) academic achievement; (3) classroom observations; (4) functional behavioral assessment; (5) psychiatric developmental history and social, emotional, behavioral and cognitive assessments.
2. The language evaluations, academic achievement, classroom observations and the functional behavioral assessment may be performed by school personnel.
3. The psychiatric developmental history, social, emotional and behavioral and cognitive assessments shall be performed by a qualified psychiatrist chosen by school personnel in consultation with Dr. Paul Dworkin. The parties shall confer and agree on an evaluator.
4. The Board shall provide all school records and evaluations necessary to perform the evaluations. The school personnel shall be allowed to answer any questions that any evaluator may require in order to conduct an evaluation of the Student.
5. The Parent will not be allowed to be present during the evaluations but may observe from another room.
6. The Parent will not be allowed to be present or observe the evaluations or assessments performed by the independent psychiatrist/psychologist or any done by the school psychologist.
7. All evaluations shall be shared with the PPT and the Parent.