

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Middletown Board of Education v. Student

Appearing on behalf of the Student:

Parent, Pro Se

Appearing on behalf of the Board:

Ms. Laurie Slade
Supervisor of Pupil Services & Special Education
Middletown Board of Education
311 Hunting Hill Ave.
Middletown, CT 06457

Appearing before:

Attorney Catherine M. Spain
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

1. Should the Student be evaluated to determine if she is eligible for special education services?
2. If yes, should the evaluation occur in a diagnostic placement?

SUMMARY:

The Student, a kindergartner, began the 2012-2013 school year at Farm Hill School. Following several instances of behavioral difficulties, which resulted in repeated physical restraint of the Student, the Mother requested that the Student be transferred to Macdonough School. As a result, the Student began to attend Macdonough School in November. Subsequent to continuing behavioral issues, including the Student's attempted elopement, the Board sought the Mother's consent to conduct an initial evaluation of the Student. The Mother did not respond to the Board. The Board then invoked due process procedures in order to conduct an educational evaluation of the Student in a diagnostic setting at Farm Hill School.

PROCEDURAL HISTORY:

A special education hearing was requested by the Board on November 2, 2012. On the same date, the undersigned hearing officer was appointed. The Request for Impartial Special Education Hearing, which was subsequently marked as Hearing Officer Exhibit-1, reads as follows:

Description of the nature of the issues in dispute, included related facts:

[The Parent] has refused PPT recommendation for Initial Evaluation including an FBA as well as a diagnostic placement at Farm Hill. [The Student] has been unsafe multiple times at school, requiring five restraints and one seclusion.

On the Request for Impartial Special Education Hearing, the Board proposed the scheduling of a due process hearing, which would allow it to demonstrate the need to conduct an initial evaluation of the Student in a diagnostic placement at Farm Hill School. Accordingly, a pre-hearing conference was held by telephone on November 21, 2012, and hearing dates were set for December 12 and 17, 2013. On December 6, 2012, the Board made a motion for an extension, which was granted to accommodate the scheduled hearing dates.

The hearing convened and concluded on December 12, 2012. In advance of the hearing, the Board submitted exhibits numbered B-1 through B-11, which were entered as full exhibits. The Mother, who did not attend the hearings, submitted no exhibits. At the December 12 hearing, the Board presented its case through the submission of exhibits as well as by the testimony of Ms. Slade, who is the Supervisor of Pupil Services & Special Education for the district. The deadline of the final decision and order is January 17, 2013.

STATEMENT OF JURISDICTION:

In accordance with the Uniform Administrative Procedure Act and Connecticut General Statutes ("C.G.S.") §4-176e through §4-178, this matter was heard as a contested case pursuant to 20 United States Code ("U.S.C.") §1415(f) and its related regulations and pursuant to C.G.S. §10-76h and its related regulations.

FINDINGS OF FACT:

1. The Student, who has a history of elopement, is a five-year-old kindergartner whose neighborhood school is Macdonough School. (Testimony of Ms. Slade)
2. The Student began the 2012-2013 school year at Farm Hill School due to a request by the Mother, who explained that the Student would be safer at Farm Hill School because it is farther from a road (into which the Student could run) than Macdonough School. (Testimony of Ms. Slade)
3. Beginning in early September, the Student regularly experienced behavioral problems in the classroom such that on September 4, the Student's teacher implemented a behavior plan. (Exh. B-3)
4. On September 11, the Student attempted to run away from school and was restrained by a behavior technician. While restrained, the Student kicked, punched, bit and spit on the technician who was holding her. (Exh. B-1)
5. Within twenty-four hours, Farm Hill School personnel notified the Mother of this incident in person and by telephone and mailed her Connecticut's "Parental Notification of the Laws Relating to Seclusion and Restraint in the Public School." (Exh. B-1; Exh. B-3)

6. On September 12, the Board initiated a referral to determine the Student's eligibility for special education and related services and invited the Mother to attend a Planning and Placement Team ("PPT") meeting scheduled for September 20, 2012. (Exh. B-3)
7. The September 12 referral to determine the Student's eligibility for special education and related services states that the Student's teacher, who had contacted the Mother with concerns as early as August 31, 2012, was concerned about the Student's behavior, specifically her kicking a fellow student and her attempted elopement. (Exh. B-3)
8. At the September 20, 2012 PPT meeting, which the Mother did not attend, the PPT recommended that the Student be monitored through general education. The PPT also determined that the Student's classroom teacher would seek the Mother's consent for a functional behavior assessment ("FBA") in order to allow for the development of a behavior intervention plan ("BIP"). (Exh. B-3)
9. On September 24, 2012, the Student was again restrained by a behavior technician, whom she kicked and struck, after throwing objects at other students. (Exh. B-4)
10. Within twenty-four hours, school personnel notified the Mother of this incident. (Exh. B-4)
11. On September 25, 2012, the Student was restrained by a behavior technician in order to prevent elopement. (Exh. B-4)
12. School personnel attempted within twenty-four hours to notify the Mother of this additional incident. A September 25, 2012 letter sent to the Mother by Farm Hill School Principal Richard Henderson states that school personnel's attempts to reach the Mother by telephone were unsuccessful. (Exh. B-4)
13. On October 2, 2012, the Student was restrained by a behavior technician after she attempted to throw a chair. Her classmates were removed from the class for their safety. (Exh. B-4)
14. Within twenty-four hours, school personnel attempted to notify the Mother of this incident. An October 2, 2012 letter sent to the Mother by Principal Henderson states that the school staff's attempts to reach the Mother were unsuccessful. (Exh. B-4)
15. On October 9, 2012, due to the Student's continuing behavioral problems, the Board initiated a second referral to determine the Student's eligibility for special education, and invited the Mother to attend a PPT meeting scheduled for October 19, 2012. (Exh. B-5)
16. The October 12 referral to determine the Student's eligibility for special education and related services states that the Student's teacher, who had contacted the Mother on September 14, 20, 27 and 28, was concerned about the Student's attempts to kick, punch and bite a behavior technician, as well as her attempts at elopement and at eating non-edibles. (Exh. B-5)

17. At the October 19 PPT meeting, which the Mother did not attend, the PPT concluded that the Student was not making satisfactory progress in her current placement. The PPT recommended that the Student be evaluated in a diagnostic placement in a self-contained classroom at Farm Hill School. (Exh. B-5)
18. The Board mailed a packet including the PPT report and recommendations and a consent form to conduct an initial evaluation to the Mother. (Testimony of Ms. Slade)
19. The packet, addressed to the Mother with return receipt requested, was refused and mailed back to the Board. (Exh. B-7; Testimony of Ms. Slade)
20. The Student has not undergone an educational evaluation, and is not currently eligible for special education and related services. (Exh. B-5)
21. The Mother has been notified of all PPT meetings and of the due process hearings, but has chosen not to attend any meetings or hearings. (Exh. B-1 through B-11)
22. Whereas Farm Hill School contains a self-contained classroom, Macdonough School does not. (Testimony of Ms. Slade)
23. Whereas Farm Hill School has behavioral technicians on staff, Macdonough School does not. (Testimony of Ms. Slade)

DISCUSSION AND CONCLUSIONS OF LAW

1. The Board is seeking a diagnostic placement, the purpose of which is to assess the needs of a child for whom an individualized education program may be needed, but for whom the evaluation study is either inconclusive or the data insufficient to determine the child's individualized education program. RCSA §10-76d-14(b).
2. The diagnostic placement is a method of evaluation, not an educational placement. *See, e.g., West Hartford Board of Education*, OCR 01-86-1016, 352 IDELR 300 (1986).
3. A hearing officer may order special education evaluations without the consent of the parent. C.G.S. §10-76h(d)(1). Federal regulations specifically provide that when the parents of a child with a disability refuse consent for the initial evaluation or a reevaluation, the Board may continue to pursue the evaluations through the due process procedures. 34 C.F.R. § 300.300(a)(3).
4. It is the obligation of a PPT to ensure that such an evaluation includes 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, for purposes of determining whether the child qualifies for special education and related services. Regulations of Connecticut State Agencies ("RCSA") §10-76d-9(a).

5. It is likewise the obligation of the PPT, in overseeing such an evaluation, to evaluate the Student in accordance with the provisions of 34 C.F.R. § 300.304, which include:

Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with Sec. 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must--

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--

(i) Whether the child is a child with a disability under Sec. 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

6. In this case, the strong evidence presented proves that there are genuine concerns regarding the emotional and cognitive status of the Student, as well as her safety. Ms. Slade, the district's Supervisor of Pupil Services & Special Education, testified credibly and persuasively that the Student needs to be assessed so that the Board may determine an appropriate program for her needs.
7. The Board has demonstrated that additional assessment information is needed to determine whether the Student may be eligible for special education and related services.
8. The PPT can more safely and fully evaluate the Student in a diagnostic placement.
9. The Student requires removal from her current educational placement for her safety.
10. The Student would benefit from a self-contained classroom, which would provide behavioral support for the evaluation process and assist the PPT in developing an appropriate educational program for her.
11. In sum, the Board has proven the need for a diagnostic placement of the Student.

12. Accordingly, the Board is entitled to the requested diagnostic placement, even without parental consent, in order to ascertain the Student's disability, if any, and her level of functioning.

FINAL DECISION AND ORDER:

1. The Board shall conduct an evaluation of the Student, in accordance with 34 C.F.R. §300.304 and RCSA §10-76d-14(b) and §10-76d-9(a), within the diagnostic placement it has proposed at Farm Hill Elementary School.
2. The Board shall convene a PPT weekly to review the Student's diagnostic placement.
3. The diagnostic placement shall be terminated as soon as the Student's needs have been determined, but, in any event, within eight weeks.
4. Five days before the end of the diagnostic placement, the PPT shall reconvene to write the Student's IEP, if it is determined that an IEP is needed, based on findings made during the diagnostic placement and other evaluative information regarding the Student.