

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Trumbull Board of Education v. Student

Appearing on behalf of the Parent:	No appearance
Appearing on behalf of the Board:	Christine Sullivan, Esq. Berchem, Moses & Devlin, PC 75 Broad Street Milford, CT 06460
Appearing before:	Sylvia Ho, Esq. Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Is the Board’s psychoeducational evaluation appropriate?
2. Are Parents entitled to an independent educational evaluation (“IEE”) at public expense?

**PROCEDURAL HISTORY:**

The Board filed the Due Process Complaint/Hearing Request on November 30, 2016 and a Hearing Officer was appointed on December 1, 2016. A Prehearing Conference was conducted on December 8, 2016 and the Parents were not in attendance. The Board confirmed that the Parents received a copy of the Hearing Request and confirmed that the Parents’ contact information to which the Prehearing Conference notice was sent was current. The hearing was scheduled for January 11, 2017. The mailing date of the Final Decision was extended to February 13, 2017 and the hearing postponed to February 8, 2017 so that the Board would be able to contact the Parents and negotiate a settlement of the dispute.

The hearing convened on February 8, 2017. Board counsel stated that Board representatives had had conversations and that the Parents were aware of the hearing and the Parents had not decided whether they would withdraw the request for an independent educational evaluation. Notice of the hearing was also sent to the Parent’s last known email address, which the Board reported as being current. The Parents did not appear at the hearing. After the evidence was presented, the Hearing Officer granted the Board’s request to extend the mailing date of the Final Decision from February 13, 2017 to March 17, 2017 for submission of Proposed Findings of Fact and Conclusions of Law. The Board submitted the Proposed Findings of Fact and Conclusions of Law on February 27,

2017. The Hearing Officer continued to issue notices to the Parents' email address and did not receive any correspondence from the Parents after the hearing.

At the hearing the Board presented the testimony of two witnesses. They were: Maureen Makres-Steinberg, Coordinator of Special Education, Trumbull Public Schools; and Yann B. Poncin, MD. The Board submitted exhibits B-1 through B-99, which were admitted into evidence as full exhibits. The Board's Due Process Complaint/Hearing Request was admitted as HO-1.

This Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony, and are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent the summary, procedural history and findings of facts actually represent conclusions of law, they should so be 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. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

### **SUMMARY:**

A third grade student with a primary disability category of Emotional Disturbance was making threats to injure himself and was not satisfactorily making progress despite a Positive Behavior Intervention Plan and regular consultation with a Board Certified Behavioral Analyst. The school team recommended that a psychiatrist evaluate the Student. The evaluator, who used a number of assessments including observation of Student, review of school records, interview of parents and school staff and psychological assessments, produced a report with recommendations and contributed to a Planning and Placement Team meeting that developed a new Individualized Education Program for Student. The Parents disagreed with the evaluation and requested an Independent Educational Evaluation ("IEE"). The Hearing Officer found the evaluation to be appropriate and that the Parents were not entitled to an IEE at public expense.

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. §§4-176e to 4-178, inclusive, §§4-181a and 4-186.

### **FINDINGS OF FACT:**

After considering all the evidence submitted by the Parties, including documentary evidence and testimony of witnesses, I find the following facts:

1. Student was born on June 29, 2008. Student attended Trumbull Public Schools from kindergarten to the third grade at Frenchtown Elementary School. At the time of the hearing, Student was a third grade student who was eligible for special education and

related services under the primary eligibility category of Emotional Disturbance. His Parents had unilaterally placed him at a private school. (B-85; Testimony, M. Makres-Steinberg)

2. Student received special education services while attending kindergarten under the primary disability of Speech and Language Impairment. The kindergarten special education and speech and language pathologist completed a questionnaire for evaluation by Alok Bhargava, M.D., a pediatric psychiatrist and neurologist of Connecticut Neurodevelopmental Services. The questionnaire revealed that the Student had difficulties with attention and behavior that were interfering with Student's learning. Student had difficulty expressing his emotional state. He would become dysregulated emotionally and say things about hurting himself or others. An initial functional behavioral assessment was conducted on December 16, 2013 and a Positive Behavioral Intervention Plan ("BIP") was developed. (B-3; B-4; B-12)
3. An Individualized Education Program ("IEP") was developed for the first grade that included specialized instruction to address deficits in cognitive, adaptive, speech/language, socio-emotional and behavioral and fine motor skills. In addition, Student required special education transport to school. The Student was provided with a bus aide. (B-4)
4. Student's behavioral challenges persisted into the first grade. Within the first month of the first grade on August 27, 2014, Student was involved in an incident when he dropped to the floor and kicked and screamed and bit school staff and banged his head against the wall. Two teachers were required to hold the Student. One person held his hands and legs while another person cradled his head. (B-7)
5. A Planning and Placement Team meeting ("PPT") met to revise the Student's IEP and BIP on September 17, 2014 to address the behaviors that were interfering with Student's learning. These included behaviors such as running around and avoiding work; making noises, crying and whining and refusing tasks; climbing inside cubbies and on shelves; throwing objects; bolting from the classroom and biting teachers.
6. Despite the revision of the BIP, the Student's behavior persisted. In October of the first grade, the Student threw objects, punched a paraprofessional stating "I'm going to set you on fire" and was hitting himself. (B-15) In November of 2014, Student stated to the paraprofessional, "I'm going to cut you" and punched, kicked and hit the paraprofessional and was noncompliant. He missed taking an entire test and had to complete it later in the day. (B-16)
7. In December of 2014, Student kicked, hit and punched his teacher and stated that "I am going to hurt myself" and "I am going to put a bomb in my mouth." He was not able to complete his work. (B-18) Despite attempts by both Parents and teachers at positive behavioral supports, Student's behavior in kicking, biting and hitting persisted in the classroom. (B-19)
8. By March of the 2014-2015 school year, Student did not make satisfactory progress toward some IEP goals such as maintaining attention to task for 10 minutes in a small or large group setting. The PPT met on March 27, 2015 to update the BIP and review and revise the IEP. A Board Certified Behavioral Analyst ("BCBA") had been

- providing consultation and the IEP summary indicates that the BCBA would continue to provide consultation. (B-22)
9. The Student's end of year report card indicated that the Student needed improvement in many social and learning skills and was making limited progress. (B-25)
  10. In September of 2015, the PPT met and revised the IEP for pull out counseling services for coping skills and a psychological consult to support the classroom teacher when needed. (B-28; B-29)
  11. The PPT met on December 18, 2015. The school team recommended a triennial testing to occur sooner. The triennial evaluation would be a comprehensive evaluation including an FBA, behavior rating scales, cognitive, achievement, speech and language, sensory profile, fine motor testing and social/developmental history. The Parents expressed concerns about the Student's lack of academic growth. The Parents signed consent for the triennial evaluation. (B-33)
  12. In February of 2016, the Student had an incident where he bolted out of the classroom saying that he wanted to die and wanted to kill himself. He also said, "I'll take care of this myself" and proceeded to hold his breath. He cried and kicked and hit school staff. He was restrained and took a nap after the incident, which lasted 17 minutes. (B-41)
  13. On March 18, 2016, a PPT convened to review or revise the Student's IEP, review the triennial evaluations and determine continued eligibility. In attendance were Mother, Special Education Teacher, Administrator; Regular Education Teacher; School Psychologist; School Social Worker; School Nurse; and Occupational Therapist. At this PPT, the school team PPT members recommended a psychiatric evaluation be conducted due to the fact that the school team was concerned with the Student's emotional regulation, aggression, and self-injurious behaviors in school. Specifically, the school team discussed at the PPT that the Student was hitting his head, throwing objects, standing on desks, biting staff and bolting from classroom, refusing to do work, refusing to follow directions, and using vulgar language. The team discussed numerous acts of aggression. Safety concerns were also noted and discussed at the March 18<sup>th</sup> PPT. (B-54, Testimony, M. Makres-Steinberg)
  14. The Mother was given a consent form for the psychiatric evaluation and took the consent form home with her to review. (B-54)
  15. On April 22, 2016, another PPT convened to review and revise the Student's program. As the Student's emotional dysregulation and aggression continued to be a concern, the school team continued to recommend a psychiatric evaluation. The Parent refused to sign consent for the psychiatric evaluation. The Parent again took the consent form home. (B-61)
  16. The school team provided information about the child psychiatrist who was recommended to conduct the psychiatric evaluation, Dr. Yann B. Poncin; this information was forwarded by email to the Parents. The Parents gave permission and signed the consent for a psychiatric evaluation to be conducted, dated April 27, 2016. (B-64).

17. Yann B. Poncin, MD is a child and adolescent psychiatrist who was retained by the Board to conduct a psychiatric evaluation. (B-69, 70 and 72; Testimony, M. Makres-Steinberg and Y. Poncin) Dr. Poncin is an assistant professor in the Yale Child Study Center, is board certified in psychiatry and neurology, and board certified in child and adolescent psychiatry. (B-99; Testimony, Y. Poncin) Dr. Poncin is also in private practice on a part time basis. Dr. Poncin is a licensed physician in the state of Connecticut and also holds a Controlled Substance Registration for Practitioner in Connecticut. Dr. Poncin has extensive training and expertise in the area of child and adolescent psychiatry having served as medical director for the Yale –New Haven Children’s Pediatric Emergency Department and Child Psychiatry on Pediatrics, and medical director of Intensive In-Home Child & Adolescent Reintegration Service. (B-99; Testimony, Y. Poncin)
18. In addition, Dr. Poncin has conducted hundreds of psychiatric evaluations of children in the course of his career and follows a standard protocol including review of records, interviews of staff, parents and the student. (Testimony, Y. Poncin)
19. The purpose of a psychiatric evaluation is to assess the Student’s social, emotional, and behavioral function for the purpose of educational planning. In conducting a psychiatric evaluation, the psychiatrist will determine what factor or clinical diagnosis contributes to the Student’s emotional dysregulation and aggressive behaviors at school, what type of program is appropriate to meet the Student’s needs, what strategies and interventions should be utilized by staff to de-escalate a situation, and also what are appropriate consequences and responses to the Student’s behavior. (B-83; Testimony, Y. Poncin)
20. Dr. Poncin conducted the psychiatric evaluation in July of 2016 and reviewed a complete set of records of the Student, interviewed staff at Frenchtown, interviewed Parents, and conducted a mental status exam of the Student. (B-83, Testimony, Y. Poncin)
21. Dr. Poncin diagnosed the Student with attention deficit/hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), intermittent explosive disorder, underachievement in school, and unspecified disorder of psychological development. (B-83; Testimony, Y. Poncin).
22. Dr. Poncin made a number of recommendations for the educational setting and behavioral support for the Student. They included being in a small setting, with small staff to student ratio and personnel who have training and experience working with children who struggle emotionally and behaviorally. He also recommended the use of a behavioral consultant and behavior technician to provide one to one support of Student. (B-83; Testimony, Y. Poncin).
23. Dr. Poncin recommended that Parents and school continue to work on collaboration for a supportive and mutually understanding atmosphere. (B-83).
24. Dr. Poncin recommended techniques for the school team to consider when addressing the Student’s academic and behavioral issues. (B-83).
25. Dr. Poncin also made various non-educational recommendations including accessing outside therapy services; medication to address ADHD symptoms and dysregulated

behaviors and referral to resources concerning special education. (B-83, Testimony, Y. Poncin)

26. A PPT was held on September 28, 2016 to review Dr. Poncin's evaluation and recommendations. The Mother participated by phone. Both Mother and School Team agreed to a change in primary eligibility identification to Emotional Disturbance. (B-85). The Parent did not disagree with the evaluation presented by Dr. Poncin. (B-85, Testimony, M. Makres-Steinberg and Y. Poncin)
27. By letter dated October 21, 2016, the Parents advised the school team of their disagreement with the psychiatric evaluation conducted by Dr. Poncin. (B-88, Testimony, M. Makres-Steinberg) In that same correspondence, the Parents requested an Independent Educational Evaluation ("IEE"). (B-88)
28. On October 28, 2016 the PPT convened to discuss the Parents' request for an IEE and to review the team's recommendations from the September 28, 2016 PPT meeting. The PPT denied the Parents' request. (B-90, Testimony, M. Makres-Steinberg)

#### **CONCLUSIONS OF LAW AND DISCUSSION:**

1. The purpose of an evaluation is to determine if the Student is a child with a disability under §300.8 and eligible for special education and to determine the educational needs of the child. 34 C.F.R. §300.301(c)(2)
2. In contrast to instruction in a general education classroom curriculum, "special education" means "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability." See 34 CFR §300.39(a)(1). "Specially designed instruction" means "adapting, as appropriate to the needs of an eligible child, content, methodology or delivery of instruction to address the unique needs of the child that result from a child's disability; and to ensure access of the child to the general curriculum, so that the child can meet educational standards within the jurisdiction of the public agency that apply to all children." 34 C.F.R. §300.39(b)(3)
3. A child is determined to be eligible after an "appropriate" evaluation. An "appropriate" evaluation is one that complies with IDEA and Connecticut regulations to produce information to determine whether the student is eligible for special education services and to develop the student's individualized education program ("IEP"). 34 C.F.R. §300.301-§300.305; R.C.S.A. Sec. 10-76d-9(a) and (b)
4. If a student receives an evaluation with which the parent disagrees, a parent has a right to an independent educational evaluation ("IEE") at public expense, which means at no cost to the parent. 34 C.F.R. § 300.502, R.C.S.A Sec. 10-76d-9(c)(1) and (2). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure either an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria. 34 C.F.R. § 300.502; R.C.S.A. Sec. 10-76d-9(c)(2). Parent's entitlement to a publicly funded IEE is conditioned on their disagreement with the Board's evaluation. In this case, Parent informed the Board that they disagreed with the Board's evaluation and the Board promptly filed this Due Process Complaint. (Finding of Fact No. 27)

5. The Board's evaluation was in compliance with 34 C.F.R. §300.301-305 and R.C.S.A. Sec. 10-76d-9(a) and (b).
6. Subpart (1) 34 C.F.R. § 300.303 entitled "Reevaluations" states that "[a] public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311.. [i]f the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation".
7. The functional performance that needed to be addressed was the Student's behavior, which impeded his ability to learn in a classroom setting. Additionally, the Student's threats to self-harm and hurt others warranted a reevaluation. (Findings of Fact No. 6, 10 and 12)
8. The purpose of the reevaluation was directed to educational planning and was appropriate. (Finding of Fact No. 19)
9. The evaluator was a highly experienced psychiatrist who understood both the Student's disability and the classroom setting. (Finding of Fact No. 17)
10. The evaluator did not rely on a single assessment but reviewed records, interviewed staff and parents and observed the Student in the home setting. (Finding of Fact No. 20)
11. The evaluator provided important information about placement, specialized instruction and special education support services that was then to develop the Student's IEP. (Findings of Fact No. 22-25)

**FINAL DECISION AND ORDER:**

The Board's psychoeducational evaluation is appropriate.  
The Parents are not entitled to an IEE at public expense.