

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Darien Board of Education v. Student
Student v. Darien Board of Education

Appearing on behalf of the Mother: Andrew Feinstein, Esq.
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Appearing on behalf of the Father: Phillip J. Cohn, Esq.
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Appearing on behalf of the Board: Andreana Bellach, Esq.
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Appearing before: Sylvia Ho, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Case No. 18-0513: Do the circumstances warrant an order overriding the Father's refusal to consent for the following evaluations recommended by the Board: (1) assistive technology in all areas including mobility; (2) augmentative communication; and (3) transition (post secondary educational and employment planning).
2. Case No. 18-0520: Did the Board offer an IEP by the beginning of the 2018-2019 school year?

PROCEDURAL HISTORY:

The Board filed the Due Process Complaint/Hearing Request No. 18-0513 on June 8, 2018. The Mother filed the related Due Process Complaint/Hearing Request No. 18-0520 on June 12, 2018 and asked for consolidation of the two cases. The Hearing Officer was appointed on June 12, 2018 and June 14, 2018 and conducted a Prehearing Conference on June 21, 2018 and granted consolidation of the two cases. The original mailing date of the Final Decision was August 29, 2018. At the Board's request the mailing date of the Final Decision was extended to September 24, 2018. At Board and Mother's request, the mailing date of the Final Decision was extended

from September 24, 2018 to December 3, 2018. The hearing was scheduled for October 22, 2018. The Father and Mother requested a postponement of the October 22, 2018. Both requests were denied.

The hearing convened on October 22, 2018. In attendance were Dr. Scott McCarthy, Director of Special Programs and Mother, with counsel. The Father and Father's counsel did not attend. The Hearing Requests were admitted as HO-1 and HO-2.

This Final Decision and Order sets forth the Hearing Officer's summary and 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 the summary, procedural history and findings of facts actually represent conclusions of law, they should so be considered and vice versa. See *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). All motions that were not previously ruled upon are hereby denied.

SUMMARY:

The hearing concerns the need for evaluation of a high school student who had previously been placed in an out of district placement and was attending Darien High School for the 2018-2019 school year. The Parents are divorced. The Father and Mother disagreed with the placement at Darien High School. The Mother agreed to certain evaluations recommended at an April 2018 Planning and Placement Team meeting. The Father did not give consent to evaluate. The school district brought a Due Process Complaint to override the Father's lack of consent to evaluations. The Mother brought a Due Process Complaint against the school district at the end of the 2017-2018 school year alleging that the school district did not have an Individualized Education Plan ("IEP") in place prior to the 2018-2019 school year.

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:

I find the following facts, which are generally undisputed.

1. Student was born on April 28, 2002 and lives in the school district. At the time of the hearing, he was sixteen years old and attended Darien High School. The Student is eligible for Special Education and Related Services under the disability category of Other Health Impairment. Student has difficulty accessing the general education curriculum due to diagnosed impairments relating to Cerebral Palsy. His below average gross motor function

impairs mobility to allow him to get to and from classes with non-disabled peers. His parents are divorced. Both parents have educational decision making authority.

2. A PPT meeting was convened on April 18, 2018. Both parents received notices of the PPT. The Mother attended. The Father did not. Although notice of the PPT meeting was received, the Father did not attend the PPT meeting due to scheduling conflicts. (See record of hearing; and statements of Father.)
3. Subsequently, it was understood by the Board that the Father would not consent to the recommended evaluations and the Board filed a Hearing Request on June 8, 2018. The evaluations recommended by the April 18 PPT were not conducted due to the Father's lack of consent. (HO-1)
4. The Mother also filed a Hearing Request on June 12, 2018, alleging that no individualized education plan had been developed for the Student prior to the next school year. (HO-2)
5. During the course of the hearing process, it became clear that the source of delay in evaluations was the Father's lack of consent to the recommended evaluations. The Father's attorney took the position that the Father did not disagree with the recommendation to conduct evaluations but wanted to delay PPT meetings due to his schedule conflicts. A number of PPTs were scheduled after the Due Process Complaint was filed, which the Father deemed to be inconvenient to his schedule. In the meantime, the beginning of the new school year was fast approaching. (See Record)
6. After a prolonged and protracted period of discussions regarding convenience, vacations and scheduling, the Hearing Officer made a determination that there would be a danger to the Student's educational interest if there were further delay. The Hearing Officer issued an interim order and ordered evaluations to proceed at the end of July 2018 and for the parties to meet after the evaluations had been conducted to plan the IEP for the next school year. (See Record)
7. Subsequently, the Hearing Officer issued an interim order on July 24, 2018 at the Board's and Mother's request to override the Father's lack of consent so that the evaluations could be completed and an IEP be developed.
8. A hearing was convened on October 22, 2018, during which time it was determined that the evaluations that were the subject of the Board's hearing request were completed. However, no PPT had yet been scheduled to fully review the results. Further, it was determined that an IEP was in place at the beginning of the school year. The Mother withdrew Hearing Request No. 18-0520 without prejudice.

CONCLUSIONS OF LAW AND DISCUSSION:

1. Individuals with Disabilities Education Act ("IDEA") 20 U.S.C. §1414 et seq. provides that a "student with a disability" is eligible to receive special education and related services from school districts. See 34 CFR § 300.101 and 34 CFR § 300.8.
2. The Student is qualified to receive Special Education and Related Services under the category of Other Health Impairment. 34 CFR § 300.8 (a)(1).

3. “Related services” under the IDEA are supportive services provided to a child with a disability via the IEP process to assist the child to benefit from special education. 34 CFR § 300.34 (a).
4. These related services include mobility services, which an IEP team (known in Connecticut as a “PPT”) must consider in designing a child’s IEP. 34 CFR § 300.320(a)(4).
5. The Hearing Officer has authority to order an evaluation during the pendency of a Due Process Hearing pursuant to Section 10-76h(d) of the Connecticut General Statutes.
6. Section 10-76h(d)(1) of the Connecticut General Statutes also authorizes the Hearing Officer to order an evaluation when Parents refuse to consent.
7. The conduct of the Father posed delays in the planning process that posed endangerment to the educational interests of the Student in that it prevented the development of related services that are necessary for the Student to receive Special Education and access the General Education curriculum. (See Finding of Fact No. 3 and 5).

FINAL DECISION AND ORDER:

1. Case No. 18-0513: The Father’s refusal to consent is overridden for the following evaluations: (1) assistive technology in all areas including mobility; (2) augmentative communication; and (3) transition (post secondary educational and employment planning).
2. Case No. 18-0513: The Order above extends to any subsequently planned evaluations for the issues above for the remainder of the 2018-2019 school year.
3. Case No. 18-0520: is dismissed without prejudice.