

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Willington Board of Education v. Student

Appearing on behalf of the Board: Attorney Craig Meuser
Chinni & Meuser, LLC
30 Avon Meadow Lane
Avon, CT 06001

Appearing on behalf of the Parents: Attorney Courtney Spencer
The Law Offices of Courtney P. Spencer, LLC
701 Hebron Avenue
Glastonbury, CT 06033

Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Whether the Board's evaluation conducted by Dr. Isenberg is appropriate.

PROCEDURAL HISTORY/DISCUSSION:

This case arose out of a formal request by the Parents at the Planning and Placement Team [PPT] meeting on January 26, 2010 that the Board pay for another neuropsychologist evaluation to be conducted by an evaluator chosen by the Parents. The Board filed this due process request pursuant to 34 C.F.R. §300.502(b) to defend the appropriateness of the neuropsychological evaluation conducted by Dr. Gary Isenberg. [Exhibit H.O.-1]

The Parents received this request for hearing on February 3, 2010, and a prehearing conference was convened on February 12, 2010. This matter convened on two hearing dates, March 11, 2010 and March 17, 2010.

Prior to the matter convening the Parents' attorney submitted a notice that they "withdraw their request for an independent educational evaluation without prejudice," [Exhibit H.O.-2] and subsequently requested that the case be dismissed as there was no case or controversy and that the matter was moot. [Exhibit H.O.-4]

The Board objected to the Parents' request for dismissal as the Parents equivocated in withdrawing their request "with prejudice," and after oral argument on the issue of mootness, the case proceeded with testimony by the Board's director of special education on the first hearing date.

Additional email transmittals between counsel were copied to the hearing officer in the afternoon of March 16, 2010 as to whether the case was moot, and what submissions or testimony would be acceptable to the Board to communicate that the Parents were not seeking reimbursement for the evaluation that is currently being conducted by the Parents' independent evaluator. [Exhibit H.O.-5]

At the second hearing date, the Parents' attorney asserted that the Parents would not challenge the appropriateness of the neuropsychological evaluation by Dr. Isenberg, but wanted to retain the right to request reimbursement for the neuropsychological evaluation currently being conducted by the Parents' independent evaluator. The Board's attorney argued that this stipulation would not resolve the issues in this hearing because, if the Parents continue to request reimbursement for the neuropsychological evaluation, the Board would be required by regulation to defend the appropriateness of its evaluation.

In accordance with the regulations, if a parent requests an independent evaluation, the public agency must without unreasonable delay either provide the independent educational evaluation at public expense or file a due process complaint to request a due process hearing to defend the public evaluation. 34 C.F.R. §502(b)(4) The regulations further explain that if the public agency files the due process hearing request and the final decision is that the agency's evaluation is appropriate, the parent still has a right to an independent educational evaluation, *but not at public expense*. 34 C.F.R. §502(b)(3)[emphasis added] Thus, the Parents' request for an independent evaluation at public expense is inextricably intertwined with the defense of the appropriateness of the Board's evaluation. The Parents renewed request to dismiss the case was denied at the second hearing date.

After further discussion, the Parents' attorney submitted an affidavit at the second hearing date which stated that the Parents were no longer requesting that the Board fund an independent neuropsychological evaluation as requested at the PPT on January 26, 2010. [Exhibit P-15]

The Mother was called as a witness by the Board to clarify the assertions in the affidavit. The Mother testified that she would not request that the Board fund the evaluation that is being conducted in 2010 by Dr. Ciocca as an independent evaluation.

In light of this testimony and the submitted affidavit, the Board's attorney requested that the case be withdrawn. Based on this request, the case was dismissed.

FINAL DECISION AND ORDER:

The matter is **DISMISSED**.