

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Appearing on behalf of the Board: Attorney Nicole A. Bernabo
Sullivan, Schoen, Campana & Connon, LLC
646 Prospect Avenue
Hartford, CT 06105-4286

Appearing on behalf of the Parent: The Parent proceeded *pro se*.

Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

Board's issues:

1. Whether the Board is entitled to have Dr. Marshall Gladstone conduct a comprehensive psychological evaluation of the Student.
2. Whether the Board is entitled to evaluate the Student through a diagnostic placement.

Parent's issues:

1. Whether the Parent is entitled to an independent evaluation of the Student by Dr. Orv Karan.
2. Whether the Student shall be tutored at home during the pendency of the hearing.

PROCEDURAL HISTORY:

The Board requested this hearing on January 23, 2004. A prehearing conference was held on January 29. At that prehearing, the Parent indicated that she wanted to retain an attorney to represent her in this hearing. The Parent was encouraged to do so, and was given dates and times when the hearing officer and Board's attorney would be available to hold a second prehearing with the retained attorney. No request was received to schedule a second prehearing conference, and no notice of representation was submitted by an attorney.

On February 9, the day before the first scheduled hearing date, the Parent submitted a request to postpone the February 10 hearing date because the Parent was still in the process of retaining an attorney. [Exhibit HO-2] In her request for postponement, the Parent also requested an independent evaluation of the Student completed at the Board's expense, and homebound tutoring during the pendency of the hearing. [Exhibit HO-2]

The hearing was convened on February 10. At the hearing, the Parent was encouraged to contact the attorney she said she was in the process of retaining. The Board's attorney also contacted her office to determine whether any letter of representation had been forwarded to her. No letter of representation was submitted to the hearing officer or the Board's attorney. The Parent stated on the record that she had spoken to the attorney, who was not yet representing her. She requested that the hearing be dismissed without prejudice, and the Board's attorney objected to this request. The request to dismiss the hearing without prejudice was denied. The Parent's request for postponement of the hearing was denied as it was not timely, and no compelling reason was shown for the late request. Conn. Agencies Regs. Sec. 10-76h-9. The Parent was on notice that she should pursue her retention of counsel at the prehearing conference, and no evidence presented indicated that she had done so in a timely manner. Moreover, because the Student was at home and not being educated at the time of the hearing, the Student's educational interest and well-being appeared to be endangered by any delay in the proceeding. The Parent requested that her issues be added to the hearing, which request was granted.

At the conclusion of testimony on February 10, the Parent was given an opportunity to continue the case to February 11 so that she would have an opportunity to be further heard on all issues before the hearing and to present any additional witnesses. The Parent declined to continue the case to February 11, and concluded evidence on February 10. The Parent was also given an opportunity to request a dismissal without prejudice as to the Parent's issues only. The Parent declined to do so.

At the conclusion of evidence on February 10, the stay put placement during the pendency of the hearing, until this decision was issued, was ordered to be the last agreed upon placement at the Board middle school, with counseling and resource room support. The Student's Individualized Educational Program [IEP] provided for 1.3 hours per week of academic support and 1.0 hours per week of counseling. [Exhibit B-19]

The Board's witnesses were Dr. Marshall Gladstone, psychologist, and the Board interim special education director Anne Walsh. The Parent's witnesses were the Board school psychologist Diane Valentine and the Parent.

To the extent that the procedural history, summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. Bonnie Ann F. v. Callallen Independent School Board, 835 F. Supp. 340 (S.D. Tex. 1993)

SUMMARY:

The Student, a 12-year-old seventh grader has been identified as eligible for special education and related services since March 2002 as having a serious emotional disturbance.

In the fall 2003 the Student, who had been diagnosed with a mood disorder and a gender identity disorder, was having behavior difficulties in school including work refusal and avoidance, defiance and non-compliance and refusal to comply with requests. The Planning and Placement Team [PPT] convened in September, and recommended that an independent psychologist consult to evaluate the Student. The psychologist recommended a diagnostic placement of the Student in a therapeutic setting to better determine a program and placement for the Student and recommended additional psychological testing as the Student was experiencing significant psychological stress and, when interviewed, was guarded. Prior to completion of the psychological assessment, the Parent revoked consent for the psychologist to complete his evaluation. The Parent also would not consent to the diagnostic placement. The Parent refused to send the Student to school, as she felt the Student was not physically and emotionally safe in the Board school.

The Board requested this hearing to override the Parent's lack of consent to the completion of the psychological evaluation and to the diagnostic placement. The Parent amended the issues to request an independent evaluation, and sought tutoring at home during the pendency of this hearing.

FINDINGS OF FACT:

1. The Student is 12 years old, and currently in seventh grade at the Board middle school. He has been identified as eligible for special education and related services since March 2002 as having a serious emotional disturbance. [Exhibits B-23, B-9] The Student's IEP provides for resource room support and counseling. [Exhibit B-19]
2. Currently the Student has not been attending school, as the Parent has refused to send the Student to school. [Testimony Ms. Walsh] The Parent testified that she did not believe that the Student was physically and emotionally safe in the Board school. [Testimony Parent]
3. When the Student attended school in the fall 2003, the Board staff was concerned as the Student was having difficulties. [Testimony Ms. Walsh] At this time, the Student was exhibiting concerning behaviors in the school, including work refusal and avoidance, defiance and non-compliance, and refusal to comply with requests. [Exhibit B-20]
4. At the Planning and Placement Team meeting on September 19, 2003, the Board and the Parent agreed that Dr. Marshall Gladstone, an independent psychologist, would

consult with the school to evaluate the Student and make recommendations as to how the Student's IEP could be revised to address the Student's needs. [Testimony Ms. Walsh, Exhibit B-20] The Board director felt that the evaluation by Dr. Gladstone was necessary to help the Board better program for the Student. [Testimony Ms. Walsh]

5. On October 24 and November 19, Dr. Gladstone conducted an assessment of the Student. [Exhibit B-21] Dr. Gladstone is a clinical neuropsychologist who has been in practice for the 15 years. He is also trained as a special education teacher, and had worked in special education from 1970 to 1980. He has been conducting assessments for students for the past twelve years, completing approximately 100 in 2003. He has never had any affiliation with the Board prior to this case. [Testimony Dr. Gladstone] Dr. Gladstone's testimony was insightful and knowledgeable. His assessment is objective and appropriately focuses the attention on the Student's psychological and educational needs.

6. In preparation for the consult/evaluation of the Student, Dr. Gladstone requested and reviewed all the available records regarding the Student. He reviewed the previous psychological testing completed in 2001, and also reviewed the psychiatric evaluation by Dr. Irene Abramovich which was completed in February 2002. [Testimony Dr. Gladstone; Exhibits B-6, B-8]

7. The school psychologist's report completed in 2001 had concluded that the Student had many behavioral and emotional concerns that were affecting him socially and creating difficulty for the Student educationally. The Behavior Assessment System for Children [BASC] determined at-risk or clinically significant scores in the areas of hyperactivity, depression, attention problems, withdrawal, adaptability, leadership and study skills. The Children's Depression Rating Scale [CDRS-R] indicated at that time that a depressive disorder was likely to be confirmed in a comprehensive diagnostic evaluation. The school psychologist recommended that the Student undergo a psychiatric evaluation with Dr. Irene Abramovich to give the Board insight into the Student's emotional difficulties and strategies to deal with them. [Exhibit B-6]

8. In February 2002, Dr. Abramovich evaluated the Student. She diagnosed the Student with Mood Disorder NOS and Gender Identity Disorder NOS. She noted that the intensifying mood swings slow both his academic progress and social development. Dr. Abramovich recommended treatment with mood stabilizers, and also recommended antidepressants, depending on the depth of the Student's depression. Dr. Abramovich also recommended individual therapy. Dr. Abramovich noted that group therapy would be more successful if the first steps of medication and individual therapy were in progress, and that family intervention appeared to be beneficial. [Exhibit B-8]

9. In addition to the review of the prior records, Dr. Gladstone interviewed the Parent, the Student, classroom teachers, the homeroom teacher, the special education teacher and the school psychologist. Dr. Gladstone observed the Student in a number of school settings, including the homeroom, transition time, the cafeteria and in language arts. [Testimony Dr. Gladstone]

10. Dr. Gladstone's impression of the Student was that he was extremely bright and very articulate. He was neatly groomed and soft spoken. The Student was extremely guarded during the interview, and would not readily share information. He was an articulate youngster who was cautious and well aware that he wouldn't want to be perceived as a problem. [Testimony Dr. Gladstone]

11. From the behavioral report and the previous psychological report, it was clear to Dr. Gladstone that the Student was having serious behavior adjustment problems and socialization problems. The reported behavioral problems related to outbursts when the Student was frustrated in the classroom. The Student would defy rules and leave the room, or shut down and withdraw. The Student had difficulty managing emotions, and would leave the environment and not deal with the situation around him. His behavior impacted his social adjustment as others observed behavior out of the norm. The record also reflected that the Student had social problems. [Testimony Dr. Gladstone]

12. During the observation, Dr. Gladstone noted that the Student sat exclusively with girls, and didn't interact with boys. On the way out of the cafeteria, Dr. Gladstone observed that the Student was ridiculed by a boy, who called him a girl. In the mainstream classroom, the Student was quiet and noncompliant. He resisted engaging in the assignment. The Student spent the class not completing anything. He was left alone to be non-compliant. As long as he was not disruptive, the class teacher tolerated his behavior. [Testimony Dr. Gladstone]

13. Dr. Gladstone completed a report on his partial assessment of the Student. Based on this partial assessment, Dr. Gladstone found that the Student is undergoing very significant psychological stress. The Student has been diagnosed with a mood disorder. He is suffering from depression or dysthymia, has poor self esteem and has internalized anger and resentment. The Student is suspicious of his environment. The Student doesn't feel accepted and suffers from social isolation. The Student has developed defenses that are not helpful to him, such as social withdrawal, isolation and fleeing from situation. The Student also has issues with feelings of identity, including gender identity issues. The Student's self esteem and sense of worth are entangled in his gender identify disorder. [Testimony Dr. Gladstone, Exhibit B-21]

14. Based on his partial assessment, Dr. Gladstone recommended that the Student be evaluated in a diagnostic placement in a therapeutic environment which could deal with adjustment difficulties during the school day. This integrated setting would allow the Student an opportunity to make changes in light of feedback in therapy, and through other youngsters in a clinical setting. Dr. Gladstone recommended that the diagnostic placement would be appropriate at the Farmington Diagnostic Center, which provides short term evaluation in an educational setting. This diagnostic placement would be helpful to get better information for recommendation of a long-term program and placement. [Testimony Dr. Gladstone, Exhibit B-21]

15. Dr. Gladstone noted that he needed additional psychological testing to develop a comprehensive picture of the Student, particularly in light of the Student's guarded behavior. Dr. Gladstone testified that a Millon Adolescent Clinical Inventory and a Rorschach test would offer him a wealth of data about the Student. With this information, he would be able to make a comprehensive assessment of the Student. [Testimony Dr. Gladstone]

16. At the December 12, 2003 PPT meeting, the school members of the team recommended that Dr. Gladstone complete his assessment of the Student. At the time, the Parent agreed to Dr. Gladstone completing the assessment. [Exhibit B-22]

17. Before Dr. Gladstone completed these necessary components of his assessment, the Parent contacted the Board and revoked consent for Dr. Gladstone to complete the assessment. [Testimony Dr. Gladstone]

18. The Parent testified that she liked Dr. Gladstone's report for the most part, but, as with any diagnosis, she wants a second opinion. The Parent testified that she probably would not disagree with Dr. Gladstone completing his assessment, but she wants a second opinion before Dr. Gladstone finishes his evaluation. The Parent wants a second opinion independent evaluation completed by Orv Karan, a psychologist. [Testimony Parent]

19. At the January 23, 2004 PPT meeting, the Board recommended that the Student be referred to the Farmington Valley Diagnostic Center for a diagnostic placement. [Exhibit B-23] The Parent would not consent to the diagnostic placement, as she wanted an assurance that the Student would not return to the Board middle school after the diagnostic placement. The Board director did not agree to that stipulation, as the purpose of the diagnostic placement was to make recommendations for programming and placement. The Board director could not agree to the stipulation, as she wanted staff at the diagnostic placement and the members of the PPT to make program and placement recommendations based on the Student's evaluation from the diagnostic placement. [Testimony Ms. Walsh]

20. The Parent testified that she has no objection to the Student's referral to Farmington Valley Diagnostic Center for a diagnostic placement. She would not agree with the Board at the PPT meeting to the diagnostic placement, as she wanted to ensure that the Student did not return to the Board's schools. The Parent was concerned that the Student was not physically and emotionally safe in the school system, and that he needs a fresh start. [Testimony Parent]

21. The Board has offered counseling and a second psychiatric evaluation to the Student on a number of occasions. [Testimony Ms. Walsh; Exhibits B-13, B-15, B-16, B-17] The Parent rejected the Board's offers, and has not pursued outside counseling as she believes the Student only needs group therapy, as recommended by a psychologist in 2002. [Testimony Parent]

22. The Parent also rejected outside counseling as she is concerned about the presence of Dr. Abramovich's psychiatric evaluation which diagnoses the Student with Mood Disorder NOS and Gender Identity Disorder NOS. [Testimony Parent, Exhibit B-8] The Parent continues to seek to expunge this evaluation from the Student's records as she believes it is not accurate. [Testimony Parent] Dr. Gladstone did not disagree with Dr. Abramovich's diagnostic conclusions. [Testimony Dr. Gladstone]

CONCLUSIONS OF LAW:

1. The Board is seeking a complete psychological evaluation of the Student to determine eligibility and an appropriate program for the Student. In conducting its evaluation, the Board shall ensure that a complete evaluation study is conducted. Conn. Agencies Regs. Sec. 10-76h-9(a) The evaluation study shall include 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. Conn. Agencies Regs. Sec. 10-76-9(a)

2. It is the obligation of the PPT to review existing assessment data regarding a child and to determine whether additional information is necessary in order to program for the child. Initially the PPT reviews existing evaluation data and identifies:

what additional data, if any, are needed to determine –

- (i) Whether the child has a particular category of disability, as described in Sec. 300.7, or, in the case of a reevaluation of a child, whether the child continues to have such a disability;
- (ii) The present levels of performance and educational needs of the child;
- (iii) Whether the child needs special education and related services, or, in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
- (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

34 C.F.R. Sec. 300.533(a)

3. In this case, the Student's behavior and actions have created a challenge for the members of the PPT to address successfully, as it is unclear how to appropriately draft an IEP for the Student and where the program should be provided. Additional assessment information is needed to make this determination.

4. This evaluation sought by the Board is a reevaluation. The Board has an obligation to conduct such a reevaluation *if conditions warrant a reevaluation* . . . but at least once

every three years. 34 C.F.R. Sec. 300.536 [Emphasis added]¹ The conditions so warrant such a reevaluation. As noted by Dr. Gladstone's partial assessment, the Student suffers from a complex psychiatric and psychosocial disorder, and his socially unacceptable behaviors persist in the mainstream setting. According to Dr. Gladstone the current placement is ineffective for the Student. The Student is experiencing a significant amount of psychological stress, which has been impacting his functioning in school. Under these circumstances it is imperative that the Student be reevaluated so that an appropriate program can be developed.

5. The Parent has refused to consent to the completion of Dr. Gladstone's psychological evaluation. The Board is entitled to the requested evaluation in order to fulfill the need to have current assessment data to ascertain the child's disability and level of functioning pursuant to 34 C.F.R. Section 300.533(a)(2)

6. In the absence of parental consent for evaluations, hearing officers may order special education evaluations without the consent of the parent. Conn. General Statutes Sec. 10-76h(d)(1) The federal regulations specifically indicate that when the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the Board may continue to pursue the evaluations through the due process procedures. 34 C.F.R. Sec. 300.505(b) The Board has appropriately brought such a request, and the evidence supports that Dr. Gladstone's psychological evaluation is necessary so that the evaluation of the Student is sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F. R. Sec. 300.532(h) Dr. Gladstone's psychological evaluation shall be completed.

7. The Board is also seeking a diagnostic placement of the Student in accordance with Conn. Agencies Regs. Sec. 10-76d-14(b). The Parent has refused consent to the diagnostic placement, although she testified at the hearing that she was not opposed to the diagnostic placement. The purpose of the diagnostic placement 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. Conn. Agencies Regs. Sec. 10-76h-14(b) The diagnostic placement is a method of evaluation, not educational placement. *See, e.g., West Hartford Board of Education, OCR 01-86-1016*, 352 IDELR 300 (1986) Therefore, in the absence of parental consent for the diagnostic placement, hearing officers may order the diagnostic placement without the consent of the parent, as it is a method of evaluation. Conn. General Statutes Sec. 10-76h(d)(1)

8. The strong and compelling evidence presented indicate that there are genuine concerns regarding the emotional status of the Student. Dr. Gladstone has testified that it is necessary to assess the Student to determine an appropriate program for his needs. Dr. Gladstone recommended the Farmington Valley Diagnostic Center which provides a short term evaluation in an educational setting, to get better information to program for the Student. The PPT can not fully evaluate and prepare an IEP for the Student without

¹ The Student's triennial evaluation would be due to be completed in fall 2004.

the comprehensive evaluation, completed in the diagnostic placement. The Student shall be evaluated through a diagnostic placement at Farmington Valley Diagnostic Center, or a similar therapeutic setting.

9. The Parent seeks an independent evaluation of the Student. A parent has a right to an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the Board. 34 C.F.R. Sec. 300.502

10. If the parent requests an independent educational evaluation at public expense, the Board must show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense. 34 C.F.R. Sec. 300.502 At this hearing, the Board has shown that its evaluation, once completed, is appropriate. The Board has retained an appropriate evaluator in Dr. Gladstone, who has provided an insightful, albeit incomplete, assessment. The assessment is incomplete because the Parent has revoked consent for Dr. Gladstone to complete his assessment of the Student. The Board cannot be penalized for the Parent's actions. Once Dr. Gladstone's assessment and the diagnostic placement are complete, the Board's evaluation of the Student will be sufficiently comprehensive to identify all of the child's special education and related service needs. 34 C.F.R. Sec. 300.532(h) Therefore, the Parent is not entitled to an independent evaluation at public expense.

FINAL DECISION AND ORDER:

1. The Board shall be permitted to complete Dr. Marshall Gladstone's psychological/neuropsychological evaluation of the Student.
2. The Board shall be permitted to evaluate the Student through a diagnostic placement of the Student at Farmington Valley Diagnostic Center, or a similar therapeutic setting.
 - a. The diagnostic placement shall not exceed eight (8) weeks.
 - b. The PPT shall convene to specify, in writing, diagnostic goals and objectives within 10 days of the issuance of this final decision.
 - c. The PPT shall convene at least once every two weeks with personnel working with the Student to discuss the Student's progress and to revise, where necessary, the services being provided.
 - d. The diagnostic placement shall be terminated as soon as the Student's needs have been determined, but in any event, within eight weeks.
 - e. Five days before the end of the diagnostic program, the PPT shall reconvene to write the Student's IEP based on findings made during the diagnostic placement, as well as other evaluative information regarding the Student, including the completed evaluation by Dr. Gladstone.
3. The Parent is not entitled to reimbursement for an independent evaluation of the Student.

4. The stay put placement at the Board middle school with counseling and resource room support is terminated with the issuance of this final decision.