

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Trumbull Board of Education v. Student

Appearing on behalf of the Student: Attorney Mark Sargent  
1777 Post Road East #110  
Westport, CT 06880

Appearing on behalf of the Board: Attorney Christine Sullivan  
Berchem, Moses & Devlin, P.C.  
75 Broad Street  
Milford, Connecticut 06460

Appearing before: Melinda A. Powell, Esq.  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUES:**

1. Are the evaluations planned for the student's triennial evaluation by the Board including the following areas: cognitive functioning, academic achievement, behavior rating scales, social and emotional functioning, Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP), visual motor and comprehensive sensory profile, expressive and receptive language, autism specific rating scales and adaptive skills appropriate?
2. If not, are the Parents entitled to Independent Educational Evaluations (IEE) in any of the following: comprehensive speech and language, comprehensive Occupational Therapy (OT), comprehensive FBA, comprehensive physical therapy (PT), comprehensive assistive technology (AT), comprehensive psychoeducational evaluation (with provider of Parent's choice trained in brain trauma/ concussion) and/or comprehensive central auditory processing disorder?

**PROCEDURAL HISTORY/SUMMARY:**

On June 30, 2017, the State Department of Education Due Process Hearing Unit received a due process request from the Trumbull Board of Education ("Board") pursuant to 34 C.F.R. Section 300.502(b)(2). The issues identified in the request were: (1) Are the evaluations planned for the student's triennial evaluation by the Board including the following areas: cognitive functioning, academic achievement, behavior rating scales, social and emotional functioning, Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP), visual motor and comprehensive sensory profile, expressive and receptive language, autism specific rating scales and adaptive skills appropriate?; (2) If not, are the Parents entitled to Independent Educational Evaluations (IEE) in any of the following: comprehensive speech and language, comprehensive Occupational Therapy (OT), comprehensive FBA,

comprehensive physical therapy (PT), comprehensive assistive technology (AT), comprehensive psychoeducational evaluation (with provider of Parent's choice trained in brain trauma/ concussion) and/or comprehensive central auditory processing disorder?

The Hearing Officer was appointed on July 6, 2017. A prehearing conference was held on July 24, 2017, and no objections to the issues as stated were raised. One day of hearing was held on August 22, 2017. At the opening of the hearing, the Board filed a motion to dismiss. Oral argument was held, and the Student was provided the opportunity to file a written objection to the Board's motion. It was apparent from the parties' respective arguments that there had been confusion as to whether the parents consented to the triennial evaluations.

The Student filed a request to have the hearing open to the public, a request for order regarding certain education records, and request to disqualify Attorney Sullivan from participation in the proceedings. The Hearing Officer granted the request for an open hearing. As to the education records, the Hearing Officer ordered that the records be produced to the Student by August 29, 2017. The request to disqualify Attorney Sullivan was denied.

The Student filed a written objection to the Board's motion to dismiss on August 24, 2017.

On August 25, 2017, the Board provided written notice, via email, to the Hearing Officer that it was withdrawing its due process request.

On August 26, 2017, the Student filed a due process complaint with the State Department of Education Due Process Hearing Unit, which was assigned to HO Moyher under Case No. 18-0100. The Student also filed an objection to the withdrawal of the Board's due process complaint and requested the Hearing Officer issue another order to the Board to produce the educational records by August 29, 2017. On August 30, 2017, the Student filed a motion for orders, stating in part that the Board had agreed to provide an FBA, which was one of the evaluations that had been requested by the Student.

The Student requested that Case No. 18-0100 be consolidated with Case No. 17-0609, and HO Moyher granted the request. The case was transferred to this Hearing Officer on September 5, 2017. A prehearing conference was held on September 8, 2017. The conference included discussions of outstanding matters regarding Case No. 17-0609 and their relation to proceedings for Case No. 18-0100.<sup>1</sup>

### **FINAL DECISION AND ORDER:**

The Board has withdrawn its due process complaint. The Board initiated due process regarding triennial evaluations that were planned, but had not been completed. The specific issues for this hearing encompassed future events. No additional issues were

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<sup>1</sup> The Parent represented that the requested records had either been received or presumed not to exist. Therefore, the request for additional orders to produce records is moot.

added. The specific issues as stated are premature for adjudication. A parental request for an IEE at public expense accrues when an evaluation has been completed by the Board, and the parent disagrees with that evaluation. 34 CFR Section 300.502(b)(1); OSERS *Letter to Baus*, February 23, 2015 (“a parent of a child with a disability is entitled to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency.”). See also, *Dubois v. Connecticut State Board of Educ.*, 727 F.2d 44, 48 (2d Cir. 1984).

While a parent does not have to articulate the reasons for disagreement with a particular Board initiated evaluation, there can be no disagreement with yet unknown results. A precondition to the right of an IEE at public expense is a Board completed evaluation. *Genn v. New Haven Bd. Of Ed., et al.*, Docket No. 3:12-cv-00704-CSH (D. Conn. November 16, 2016), 69 IDELR 35.

The Student’s argument to the contrary is rejected. The Student’s objection to the Board’s withdrawal of Case No. 17-0609 is overruled.

Therefore, under these specific circumstances regarding future, uncompleted evaluations, the Board’s unilateral withdrawal of its due process request is legally effective.

In addition, in light of the withdrawal of the complaint and this Order, the Board’s motion to dismiss and the Student’s objection are moot.

Issues raised by the Student’s due process complaint will proceed under Case No. 18-0100.

The Board’s due process complaint is **DISMISSED**.