

**STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS**

**DEPARTMENT OF EDUCATION**

**SPECIAL EDUCATION DUE PROCESS HEARING**

**STUDENT: JANE DOE**

**SCHOOL DISTRICT: WEST WARWICK**

**HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.  
1035 MAIN STREET  
COVENTRY, R.I. 02816**

**ATTORNEY FOR SCHOOL DEPT: JON M. ANDERSON, ESQ.  
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TEL: 276-6493**

**PARENT PRO SE:**

**STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS**

**DEPARTMENT OF EDUCATION**

**SEPCIAL EDUCATION DUE PROCESS HEARING**

**STUDENT:**

**SCHOOL DISTRICT: WEST WARWICK**

**HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.  
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**STUDENT'S ATTORNEY: ROBYN PLANTE  
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WEST WARWICK, R.I. 02893**

**LEXICON**

For the purposes of the decision in the within hearing and to ensure confidentiality of the student, the following Lexicon shall be used in this decision:

**STUDENT:**

**MOTHER:**

**SCHOOL DISTRICT: WEST WARWICK SCHOOL DEPARTMENT**

**HEARING OFFICER: ARTHUR G. CAPALDI, ESQ.**

**ATTORNEY FOR SCHOOL DEPT.: JON M. ANDERSON, ESQ.**

**STUDENT'S REPRESENTATIVE: MOTHER**

**STATE OF RHODE ISLAND**

**DEPARTMENT OF EDUCATION**

**ADMINISTRATIVE**

**IMPARTIAL DUE  
PROCESS HEARING**

## **DECISION**

**ISSUE:** Should the School District fund an Independent Educational Evaluation including a Psychological and Clinical Evaluation for the Student?

**ISSUE:** Should all services to the Student be terminated because the Parent has failed to make the Student available for a functional behavior assessment?

## **POSITION OF PARTIES**

**PARENT:** The Parent wants the School District to fund an independent educational evaluation including a Psychological and a Clinical Evaluation.

**SCHOOL DISTRICT:** An independent educational evaluation is not necessary. The School District wants to conduct a clinical evaluation.

## **SUMMARY OF DECISION and ISSUES**

**ISSUE:** Should the School District fund an independent educational evaluation including a psychological and clinical evaluation?

**DECISION:** The Parent's request is denied.

**ISSUE:** Because of the Parent's failure to make the Student available for a functional behavior evaluation, services should be terminated.

**DECISION:** The School District request to terminate services is denied.

## **TRAVEL OF THE CASE**

Pursuant to Section IX, 7.1.1 of the Regulations of the Board of Regents Governing Special Education of Children with Disabilities, on December 17, 2010, this Hearing Officer received Notice of Appointment from the Department of Education to conduct an impartial due process hearing in this matter.

On December 17, 2010, a notice of appointment was sent to all parties setting forth hearing dates and a date for a prehearing conference.

A prehearing conference was held at the Hearing Officer's office on January 20, 2010.

A hearing was held on the issues on February 4, 2011 and concluded on the same day.

The mother appeared pro se and did have an advocate with her during the prehearing and hearing.

### **FACTS**

The Student is a nine year old. The Student is a student in the Greenbush Elementary School in a collaborative third grade classroom up to October, 2010. The Student has been out of school for sixty-five days as of the date of hearing.

The Student's disability as of her last determination is emotional disturbance.

On December 2, 2010, the Parent requested an Independent Educational Evaluation to be done by a neuropsychologist or clinical psychologist at public expense and the Parent objected to the District's evaluation and recommendation for a more restrictive environment/classroom for the Student. (Plaintiff Exh 2)

The School District objected to the request for the evaluations requested by the Parent. (Plaintiff Exh. 1) and filed for a due process hearing to challenge the Parent's request and to terminate services to the Student because of the Parent's refusal to having the Student available for a functional behavior assessment.

After receipt of the due process complaint, the Parent failed to send the School District a response that specifically addressed the issues presented in the complaint in accordance with section 300.509 of the regulations. No such response was sent to the Hearing Officer or presented at the hearing.

The Parent had a neuropsychological evaluation done with an evaluation of the Parent's choosing. During the summer of 2010, the School District reviewed it. (Trans. 2-4-11 (P11-L-1) (Plaintiff Exh. 3) The School District found that neuropsychological evaluation to be a good and comprehensive report.

The School District has not performed a clinical evaluation but requires one for review by the IEP Team. (Trans. 2-4-11 p.14)

During the month of January (6<sup>th</sup>, 10<sup>th</sup> and 24<sup>th</sup>) of 2011, the Parent had a Psychological Evaluation done by Judith Lubiner, Ph.D. ABPP Clinical, an evaluator of the Parent's choosing. That evaluation was introduced as Defendant's Exhibit 2. That evaluation was given to the School District for the first time during the hearing.

The Parent was not informed by the School District as to which evaluation (Neuropsychological or Clinical) that it would not agree to. (Trans. 2-4-11 P.21 L-23)

### **DECISION**

**ISSUE:** Should the School District fund an Independent Educational Evaluation including a Psychological and Clinical Evaluation?

During the course of this hearing, the Parent raised several issues that were not part of the subject matter of the hearing. The Parent presented evidence and testimony concerning the use of restraints by the School District upon the Student and evidence concerning the School District personnel who used restraints on the Student. She presented testimony from Rebecca Clark. Ms.

Clark was from Psychological Centers and she worked with the Student since September, 2010 at home. (Trans. 2-4-11 P. 28 L-12) She was not licensed by State of Rhode Island but she is in her last year of a Doctorial program. Ms. Clark was brought to the Student as an in-home clinician because there was a risk of hospitalization by the Student. In the Student's case, Ms. Clark went into the home for symptoms of skin picking, aggression, nightmares, bedwetting, occasional day wetting, noncompliance and school refusal. (Trans. 2-4-11 P.33 L-22)

The Parent asked Ms. Clark questions concerning disregulation of the Student's behavior, the kind of tutor the Student should have and the results physical restraints have on the Student. None of these areas of questioning had anything to do with the two issues before the Hearing Officer.

The Parent's only other witness was Michael Rock. Mr. Rock has a Master's Degree in Special Education Administration from Providence College. He was the Special Education director for four years in East Providence from 2000 to 2004. He was a special education teacher for twenty-four years in both middle school and high school. (Trans 2-4-11 P.49 L-7) He was also serving the Parent as an advocate in this matter. His testimony involved explaining applied behavior analysis (ABA). His testimony was primarily directed toward what affect restraints have on a sexually abused child. Again, this testimony did not have anything to do with the issues presented in the School District's complaint.

The first issue that the School District raised was whether or not it should find an independent educational evaluation, both behavioral and clinical as requested by the Parent.

The second issue is whether or not the School District has the right to terminate services to the Student.

The Hearing Officer is bound under the regulation to hear only the issues as presented by the complainant.

Section 300.511(d) of the regulation states as follows:

“The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under sections 300.508 (b) unless the other party agrees”

The only issues the Hearing Officer has jurisdiction over are those found in the due process complaint.

The neuropsychological evaluation by Hasbro Children’s Hospital (Plaintiff Exh.3) was an independent evaluation conducted at the request of the Parent and is accepted by the School District. (Trans. 2-4-11 P.11 L-8)

Mr. Vigeant said:

“The evaluation team had an opportunity to review those finding. We thought that it was a good report, a comprehensive report and we see no need to complete another neuropsychological evaluation”  
(Trans. 2-4-11 P.11 L-8)

The Parent did not present any evidence that would establish a need for another neuropsychological evaluation. To the contrary, Ms. Clark testified that there were two IQ’s.

The second one was significantly lower than the first. She said:

“Given the discrepancy, a third evaluation might help clear up some of that difference”  
(Trans. 2-4-11 P.43 L-22)

I agree with the School district and I deny the Parent's request for another independent evaluation. Section 300.513 (c) states:

“Nothing in sections 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed”

The Parent had the right to file for a due process hearing on all the issues she raised at this hearing.

As to the request for a clinical psychological evaluation by the Parent, it should be noted that the Hasbro's evaluation included input from Dr. Deborah Rasil, a clinical psychologist. Ms. Clark would have an opinion concerning those areas that a clinical psychological evaluation would cover.

Certainly, Ms. Clark could be brought into an IEP Meeting but that does not negate the need for the School District to have a clinical evaluation done.

“...we would like an opportunity to conduct a clinical psychological evaluation given the myriad of issues that (The Student) is experiencing at the point that we have been discussing for months”  
(Trans. 2-4-11 P.14 L-19)

When Ms. Clark was asked if she supported the School District's request for a clinical evaluation, she said she did. (Trans. 2-4-11 P.47 L-20)

I find that the School District's request for a clinical psychological evaluation to be conducted by the School district is appropriate and I find for the School District on that issue. The School District shall conduct a clinical psychological evaluation forthwith.

**ISSUE:** Should the School District terminate special education services to the Student?

In order to effect a termination of services the School District has to comply with section 300.503 of the regulations. There has been no evidence presented that the School District has complied with this section. Accordingly, the request to terminate services is denied.

I know this decision is not going to be fully appreciated by the Parent because of the multitude of issues the Parent wanted addressed at this hearing. I sincerely believe the issues of restraints, placement and tutors are important issues that should eventually be addressed. The Parent has the right by way of complaint to make those issues the subject matter of a future due process hearing but I believe a better forum before which those issues should be presented is the IEP Team.

Just as the School District has many obligations placed upon it under the law, the Parent also has the obligation to cooperate with the School District to develop a plan that provides the Student with a free, appropriate, public education.

At the conclusion of the hearing, I ordered that an IEP is to be convened within fourteen days of February 4, 2011.

DATE: \_\_\_\_\_

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