Quitman School District V.

MAJOR PARTIES INVOLVED

, Father
, Mother
, Attorney

Dr. Suzanne Hawley, Superintendent
Mr. James Keith, Attorney
Ms. Ann Box, Education Paralegal
Ms. Betty Culberson, Supervisor

HISTORY

A complaint was filed with the Mississippi Department of Education against the Quitman School District by the parents of in the Fall of 2010. Shortly after the filing of this complaint, a due process hearing was requested by the Quitman School District. The hearing officer assigned to the case was Dr. S. John Obringer. After reading the extremely long complaint, the hearing officer dismissed a large portion of the case and ordered a narrowing of the issues to three components, those being: evaluation, placement, and I.E.P. An amended complaint was received and a prehearing conference was held on November 26, 2010, at which time the dates for the due process hearing were set for January 6th and 7th, 2011. On or about January 4, 2011 the hearing officer received a telephone call from both attorneys requesting an order to reduce the case to a single component, that being evaluation. The rationale by the two attorneys was the fact that the other two issues, placement and I.E.P. development "hinged" upon the first component, evaluation. Both attorneys also requested the foregoing of a formal hearing and asked if final arguments could be submitted to the hearing officer in a timely manner. The hearing officer agreed to both requests and issued the requested order. The final arguments were then received from both attorneys.

BACKGROUND

The following is not meant to be an exact detailed account, but rather a broad overview of the events leading up to the complaint.

is an old male attending the grade at Quitman Junior High School. He has a lengthy history of a developmental disorder and has received special education services for some time from the Quitman School District. On February 4, 2010 the school district and parents agreed to a "short form reevaluation" to fulfill the IDEA mandate requiring a reevaluation every three years. (IDEA.1 See 20 U.S.C.A.§ 1414(a)(2) In August of 2010, the

school district requested an IEP meeting to make necessary adjustments in his programming due to his change of schools and different class schedule. In this meeting, the parents presented results of an assessment conducted the previous day at the T. K. Martin center which were rather inconsistent with the school personnel's judgment of [redacted]'s functioning. District personnel then informed the parents that a comprehensive evaluation was recommended to clear up these inconsistencies and to assist with programming at the new school. At this point the parents refused the request for a comprehensive reevaluation and instead had their [redacted] evaluated at the University of Mississippi Medical Center in October of 2010. The Quitman School District contends that they have the right to perform their own testing and should not have to rely on the test results of the outside agencies. The school district also contends that a portion of the evaluation results from the two agencies are inconsistent with each other and that the scores do not reflect [redacted]'s current classroom performance. The attorney for the district acknowledges that a procedural error may have occurred in the written prior notice (WPN) in August, 2010 when permission from the parents for a comprehensive evaluation was requested.

CENTRAL ISSUE

After the two orders were issued by the hearing officer narrowing the scope of the complaint, the central issue in this case is the right of the school district to conduct its own reevaluation. The following judicial decisions were used in making a ruling on this case.

SHELBY S, by next friend KATHLEEN T, Plaintiff-Appellant, v. CONROE INDEPENDENT SCHOOL DISTRICT, Defendant-Appellee

United States Court of Appeals, Fifth Circuit.

June 26, 2006.

The Hearing Officer and the district court concluded that Conroe Independent School District was within its right to evaluate the student in order to obtain necessary evaluation materials. We agree and conclude that where a school district articulates reasonable grounds for its necessity to conduct a reevaluation of a student, a lack of parental consent will not bar it from doing so.

Lorraine DUBOIS, individually and as mother and next friend of her minor child, Plaintiff-Appellant,v.CONNECTICUT STATE BOARD OF EDUCATION, Town of Weston Boardof Education, Joyce C. Driskell, Richard Winokur, and Joy K. Peshkin, Defendants-Appellees.

United States Court of Appeals, Second Circuit.

Jan. 25, 1984

This case concerned issues of transportation costs for a disabled student. The court in discussing the elements of the case concluded the following:

Before a school system becomes liable under the Act for special placement of a student, it is entitled to up-to-date evaluative data. Further, the school system may insist on evaluation by qualified professionals who are satisfactory to the school officials.

G.J., personally and by and through hisparents, E.J. and L.J., Plaintiffs,v.MUSCOGEE COUNTY SCHOOL DISTRICT, Defendant

U.S. District Court, Middle District of Georgia

September 14, 2010

This case involved the parents of a 7-year-old with autism. The parents, who refused to consent to a triennial evaluation, did not succeed in obtaining a declaration that the district denied their son FAPE. The District Court ordered the parents to consent to the reevaluation that the district was unable to conduct absent the parents' consent.

Wesley Andress, Plaintiff-appellee, Cross-appellant, v. Cleveland Independent School District, et al., Defendants,cleveland Independent School District, Defendant-appellant,cross-appellee.central Education Agency and Commissioner of Education,defendant-appellee

United States Court of Appeals, Fifth Circuit. - 64 F.3d 176

Aug. 28, 1995

This is an appeal by the Cleveland Independent School District ("the school district"), which was forced to pay, under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq. ("IDEA"), for the private schooling of Wesley Andress, a special education student. The parents refused to allow the school district to reevaluate him, using its own personnel, in order to determine his continuing eligibility for special education, as his parents feared such reevaluation would harm him. We hold that there is no exception to the rule that a school district has the right to reevaluate a student using its own personnel.....If a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation.

As the parent's attorney correctly pointed out, IDEA regulations state that a student cannot be evaluated more than once within a year. As stated above, the last reevaluation meeting was held on February 4, 2010; therefore, [redacted] will be eligible for testing on or after February 4, 2011.

Due to the contentious situation between the parents and the school system that has arisen during the past months, the hearing officer feels the reevaluation by the school should be conducted by a neutral party. This could be a licensed psychometrist or school psychologist, who contracts with school systems or a licensed examiner working in another school district. If language testing is conducted, an ASHA certified speech language pathologist would be highly recommended.

Decision

The case law cited above has satisfied the hearing officer that the Quitman School District has the legal right to reevaluate [redacted] Further, the hearing officer rules that if a procedural violation occurred with written prior notice, it has no substantive impact on this case.

The hearing officer rules in favor of the Quitman School District.

Right to Appeal

Either party may make an appeal of this hearing officer's decision to the appropriate court within forty-five (45) days of receipt of the written decision of the hearing officer. If no appeal is made, the decision is binding on both parties.

Signed this 24th day of January, 2011

S. J. Obringer

S. J. Obringer, Ed.D
Due Process Hearing Officer
State of Mississippi

NOTE: This decision was delayed due to the two orders from the hearing officer to amend the complaint.