**ConnCASE 2018 March Legal Conference**

*Mental Health: Legal Implications for Educational Settings, Local and National Implications*

CASE STUDIES

**Case presented by Attorney Alyce Alfano:**

**Diagnoses:**

Historically, his identifying disability has been autism.   The psychiatric evaluation done most recently as a result of the incident included: anxiety disorder, reactive attachment disorder and rule out major depressive disorder secondary to pervasive isolation and loneliness.  An outside provider had previously diagnosed him with depression, although that was not seen at school.

**Here are the facts:**

\*Senior in high school.  Identified special education student with ASD.  Very high functioning.  Does well in school.  Some unusual behaviors.  No history of violence, threatening, peer issues.

\*Posts a photograph on snapchat with a picture of a semi-automatic rifle with a silencer and the words “When you’re shooting up the school and you’re about to enter the library.”  He also had five other photograph of school shooting content on his phone and a folder of 199 photographs of a single student.

\*Student gets suspended.  School pays for a psychiatric assessment.  Meanwhile, student is tutored although it is not without bumps in locating appropriate tutor(s) and having Student willingly engage.  Psychiatric assessment determines student may in fact be a danger -- “hard to tell” -- even though no access to weapons found -- and recommends that he NOT return to the public high school.

\*PPT convenes and determines that his behavior is not a manifestation of his disability.

\*School searches long and hard for a therapeutic day program which will take him.  One finally found after about 4-6 weeks and he has now begun that program.  Meanwhile, parent attorney is asking for compensatory education and a revision of the disciplinary records.

\*Issues:  \*Should the district have handled any part of this differently?

                \*Is the Student owed compensatory education?  If so, why?  Did he have a “right” to be in school or receive more education during the period of evaluation and school search?

                \*What is the basis for the request for a revision of the disciplinary record?  Why would the school agree to this?  Are there liability issues involved if agreed to?

**Case presented by Attorney John Flanders:**

Steve is a very intelligent 15 year old in 10th grade.  He has a history of excellent grades and no discipline or behavioral problems.  In 8th grade he was evaluated for possible ADHD, and was found ineligible for special education.  Beginning in late 9th grade Steve began failing to complete assignments.  His grades fell but for the most part remained passing.  As of mid-year his grades were 2 C’s, 3 D’s and an F.  His parents report that he regularly remains at his computer working until 2:00 in the morning, and he is often very tired at school falling asleep in class on several occasions.  Parents report he is very anxious about his work.  He regularly states that he is afraid he is getting it wrong, or that it is not good enough.  He has lost contact with friends and his parents report that he does not socialize at all.

Two weeks ago he failed to turn in a major assignment.  He was given a failing grade.  As of mid-year his grades were 2 C’s, 3 D’s and an F.  He shut down, refusing to talk to the teacher or administrator, and at the end of class left the school and walked home.  Since then he has refused to attend school.  He has engaged in behavior like barricading himself in his room and on one occasion slapped his father who was attempting to force him to the bus.  He will not complete assignments sent home.  His parents say that he has been seeing a therapist for the past three months but that he often refused to attend sessions.

Should the student be deemed eligible for special education?  Should a homebound program be set up?  What sort of goals and supports should be included in his IEP if he is found eligible?

**Case presented by Attorney Michelle Laubin:**

Student in the 10th grade with Section 504 Plan for ADHD is pulled out of class for disruption to the class bickering with another student. Both students are sent to the office and continue their argument in the ISS classroom, escalating to the point where he threatens to kill the classmate and his family.  He is overheard talking about this to a friend, and a third classmate notifies school officials of the threat, which he admits upon confrontation.  Student has been having anger management issues and has been seeing the school social worker for this issue. Before the argument escalates to threats, he asks to be allowed to leave the ISS classroom to seek assistance from either the social worker or school counselor (whom he has seen several times per week) but neither one is available.  Once the threat is made, the student is pulled out of the ISS room and interviewed by administration, following which he is suspended.  In the process of conducting the Section 504 manifestation determination, it is revealed that the student suffered a concussion playing football the previous fall, and appears to have had some dizziness and memory loss the following spring during baseball practice as well.  He has always had problems with inattention and impulsivity, but his grades seem to have suffered following the concussion and the anger management issues and severe irritability seem to have gotten worse after the concussion.  In investigating the incident in the classroom, administration reveals that the student was conducting an on-line search for specific types of firearms in the moments leading up to the argument with the classmate.  The student’s parents are divorced, and he lives with his mother and step-father, where there are no weapons in the house.  However, his father’s home does contain numerous weapons and he regularly goes target shooting with his father.  After the student’s removal from the school, the classmate is petrified that he will return to school and becomes so distraught at school that 211 is called to address his mental health in connection with this event.  What would you do and what do you predict happens with respect to the manifestation determination and any proposal to expel the student from school?

**Case presented by: Attorney Mary Jean Schierberl**

Case summary CT Special Education Hearing (Child Find, FAPE, residential placement)

(PDF INCLUDED)

**Facts:**

18 at time of hearing. During grade 9 at the public high school, student skipped classes, misbehaved and did poorly academically. School “added supports” that were not effective. Parents moved student to a private school in January. Student was not successful at private school. District convened a PPT in January to consider special education referral. Meanwhile, private school recommended a wilderness program and parents sent student to a wilderness program where student was evaluated by a psychologist and others. Private psychological found average IQ, borderline processing speed, “very significant attention problems”, math learning disability, noncompliant behavior related to ADD and learning disabilities, at risk of substance abuse but not currently abusing, Oppositional Defiant Disorder, Parent-Child Relational Problems. Psychologist recommended therapeutic boarding school. Discharge summary of wilderness program said poor self-esteem, poor insight and poor accountability, underlying emotional difficulties inhibiting achievement of academic potential. From the wilderness program, the student was enrolled in a “private boarding school for students with learning disabilities” at the start of the following school year. By October, the parents re-enrolled the student back at the district high school, after the student was unsuccessful at private boarding school. The district convened a PPT in November to consider a referral. The PPT considered the evaluations/discharge summaries performed while student was in the private placements. The PPT did not have a copy of the psychological report prior to meeting; a copy was provided at the meeting. The PPT did not “express disagreement” with any of the evaluations. The PPT did not make a decision about eligibility or request additional testing.

The PPT met again 5 weeks later in December. A letter from the student’s psychiatrist was provided (diagnosed with Major Depressive Disorder, Oppositional Defiant Disorder, ADHD Inattentive type and Nonverbal Learning Disability). PPT declined to find student eligible wanting to conduct its own evaluations to include an observation, administration of rating scales, academic testing, clinical interview, teacher feedback, cognitive testing including NEPSY II. The district evaluations were conducted in December. PPT met 6 weeks later at the end of January to review district evaluations. On the NEPSY II, student scored in expected range for certain areas and borderline in areas related to “emotion relates to social context.” The PPT determined the student was eligible as Emotionally Disturbed and placed the student in the same program she was in that year with the exception of the time at private school- a district alternative high school program, a small program with a social worker and guidance counselor on site, special education teachers and modified curriculum.

IEP included “one goal in Writing, three social/behavioral goals for counseling, one goal in Employment, one goal in Post High School Education and one goal in School skills.” The student failed classes and left school periodically.

Parents disagreed with IEP, notified district they were unilaterally placing student in a “therapeutic boarding school” where student participated in “intensive therapy” 60 to 90 minutes of individual therapy every day and an additional 4 group therapy sessions per week. After 2 months, school recommended student go to a wilderness program after she left grounds once and got into a fight once. Parents enrolled her in wilderness program from July to October when she returned to the therapeutic boarding school where she made “slow progress.” In January, student returned to her mother and re-enrolled in a different school district where her mother lived. She received her diagnosis of Bipolar Disorder. The PPT placed her at an approved private special education residential program in CT.

Parent filed against the school district responsible before present school district.

Hearing Decision:

Should student have been identified as eligible when District 2 PPT met in November?

 No, reasonable to wait to review private psychological evaluation. But, taking 5 weeks to do that is not reasonable/appropriate. And November PPT should have recommended evaluations at that time rather than waiting. Further, while District evaluations were done promptly, District took too long to review at PPT at end of January. Conclusion- District failed to timely complete Child Find process and thus denied FAPE for 3 weeks.

Was private therapeutic boarding school that parents placed student in unilaterally in January appropriate?

 Yes, it provided intensive therapeutic milieu over the entire day and integrated with academic program; was least restrictive setting.

Was wilderness program (second one) appropriate?

 Yes, it embedded academics in expedition portion of program and provided therapy.

Was IEP appropriate?

 No, didn’t show an understanding of student’s educational needs; failed to accurately describe student’s actual present levels of performance (no math goals) and ignored attention deficits and nonverbal learning disabilities and didn’t provide residential placement which each of the private evaluators in reports and testimony demonstrated she needed in order to benefit from her education (need for consistency, structure and therapeutic support in light of her intertwined disability profile). Without this, IEP not reasonably calculated to confer benefit. It was already evident that student was not benefitting from IEP placement when PPT made placement.

Was real problem alcohol and marijuana use?

 No, she used both but no evaluator identified it as a significant concern for learning.

District ordered to reimburse family for therapeutic boarding school and wilderness program

**Take Away**

Don’t know how important it was to the decision that the PPT place d the student in the alternative high school program she was currently in and not doing well.

Don’t ignore private evaluations in developing an IEP

If student is responding and making progress, IEP will likely be found to be reasonably calculated to confer benefit but if not, IEP will likely be found deficient. Here, the January PPT continued a placement that wasn’t going well and didn’t include goals in all areas of need.

Use of drugs/alcohol – figure out if use is caused by an underlying disability. There is a difference between providing drug treatment, which a district is not required to do and assessing and addressing issues/ internal distress a student may be experiencing that may be contributing to the use of drugs/alcohol which district is responsible for.