

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Regional School District No. 16

Appearing on behalf of the Student:

Parent [Mother], pro se

Appearing on behalf of the District:

Attorney Mark Sommaruga
Sullivan, Schoen, Campana & Connon, LLC
646 Prospect Ave.
Hartford, CT 06105

Appearing before:

Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the District failed under child find to identify the Student as eligible for special education from the 2008-09 school year through January 2011;
2. Whether the Student is entitled to compensatory education.

SUMMARY:

The 17 year old Student, currently attending an adult education diploma program, was a student at the District high school from fall 2008 until he withdrew from school in February 2011. The Parent brought this action against the District alleging that the District violated child find by failing to identify the Student as eligible for special education.

PROCEDURAL HISTORY:

The District received this request for hearing on July 11, 2011 [Exhibit H.O.-1] and a prehearing conference convened on July 20, 2011. A mediation session was convened on July 27, 2011 which did not resolve the issues in this case.

The hearing convened on one hearing date on September 6, 2011. A request for extension of the mailing date of the decision was granted to allow the self-represented Parent and the Board's attorney to submit closing argument. Written closing arguments were submitted by both parties on September 20, 2011.

The Mother was the sole witness for the Parent during her rebuttal case.

The District's witnesses were Mark Dandelske, District school counselor; Kristine Burns, District school social worker; Krista Accuosti, District special education teacher and Lynn Cox, District director of pupil personnel.

The Parent submitted exhibits numbered A1 to A2, B1a, C1-C3, D1-D14, E1 and F1, which were entered as full exhibits.

The District submitted exhibits numbered B1 to B150, which were entered as full exhibits.

All exhibits and the testimony of the witnesses were thoroughly reviewed and given their due consideration in this decision.

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)

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to *Connecticut General Statutes* ("CGS") §10-76h and related regulations, 20 United States Code §1415(f) and related regulations, and in accordance with the Uniform Administration Procedures Act ("UAPA"), CGS §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

FINDINGS OF FACT:

1. The Student is 17 years old and is currently attending the Shelton Adult Education High School Diploma Program. [Testimony Director; Stipulation by Parent and District]
2. Prior to his withdrawal from the District's school in February 2011, the Student attended the District high school from September 2008 when he began his freshman year.
3. During the fall 2008, the Student's grades were marginal, consisting of a 66 in Hum/SS 9, a 49 in Hum/English 9, a 72 in algebra 1, a 69 in E Science, a 79 in Spanish 2 and a 79 in Intro Trans. [Exhibit B32]
4. In December 2008, the school convened a Student Study Team ["SST"] to address the academic concerns for the Student. [Testimony School Counselor, Exhibit B-36] At this

SST, it was decided that the Student would stay after school to work with his English and earth science teacher, that the teachers would use tactile cues to focus the Student's attention, that the Student would have preferential seating, that he would use his agenda to note homework, and that he would research school clubs. The Parent and Student were present at this meeting, as well as the school counselor, another counselor, the vice-principal and the English teacher. The Parent agreed to these interventions, which were provided to the Student. [Testimony School Counselor, Exhibit B36]

5. Initially, the Student's grades improved after these interventions were put into place. In the second quarter, the Student's grades in all of his academic classes included an 83 in Hum/SS9, a 65 in Hum/Engl 9, a 90 in Algebra I, a 76 in earth science, a 90 in Spanish 2 and an 82 in Intro Trans. [Testimony School Counselor, Exhibit B32]
6. The Student maintained his progress during the third quarter of ninth grade, but his grades dropped again in the fourth quarter of the 2008-09 school year. [Exhibit B32] Teacher emails from this time period also note poor progress in the classroom, an inability to answer simple questions when asked and a student who struggles to stay focused in class. One of the Student's teachers noted on April 30, 2009 that *"in terms of behavior, he is easily distracted by other students, spends too much time talking, trying to text or listen to his iPod and often puts his head down on his desk. When we are doing work as a class the paper often sits there untouched. . . . I can't truly assess his ability vs. his lack of effort or interest."* [Exhibits D9 to D13]
7. The Student was absent 9 days, tardy 5 days and dismissed on one day during the 2008-09 school year. [Exhibit B33] The Student discipline report for the 2008-09 school year included five incidents which resulted in detentions for inappropriate behavior [picking on another student, marking up a locker and throwing something across a room] and detentions for cutting class. There were no incidents in the first half of the school year; all of these disciplinary referrals occurred from January to June 2009. [Exhibit B34, B35]
8. No evidence was submitted or testimony presented that the Student Study Team reconvened at any other point during the Student's 2008-09 school year, or at any time thereafter.
9. On August 5, 2009, the Parent submitted the Health Assessment Record to the District. On the form, the Parent noted memory problems as an issue that impacts the Student and also noted that the Student was prescribed Zoloft, an antidepressant. [Exhibit D14] No District staff followed up with the Parent regarding the information provided in the Health Assessment Record, which is kept in the files in the nurse's office. [Testimony School Counselor, School Social Worker]
10. In the first quarter of the 2009-10 school year, the Student's grades were again unsatisfactory. His first quarter grades included an F for advisory, a 66 for Hum/His 10, a 30 for Hum/Engl 10, a 39 for Geometry, a 47 for biology and a 66 for Spanish. [Exhibit B42]

11. During the 2009-10 school year the Student's disciplinary referrals increased. These referrals included incidents of smoking at school, cutting class, tardiness and disrespectful behavior to a substitute teacher. These incidents resulted in 18 detentions and three in-school suspensions. [Exhibits B48 through B49]
12. During the 2009-10 school year, the Student was absent from school while he attended a program at Children's Center of Hamden Drug Rehabilitation, from March 17, 2010 through April 26, 2010. He returned to school in April 2010, and a "Welcome Back" meeting was convened. It was decided that the school counselor would meet with the Student regularly to review how he was doing upon his return to school. [Testimony School Counselor; Exhibits B37, B43]
13. When the Student returned from the substance abuse rehabilitation center, the school counselor testified that that he was doing very well with his academic work. [Testimony School Counselor] The Student's fourth quarter grades, however, continued to be unsatisfactory, with a 76 in Hum/His 10, a 71 in Hum/Eng 10, a 54 in Geometry, a 33 in Biology and a 63 in Spanish. [Exhibit B-42]
14. During the 2009-10 school year, the Student received counseling from the School Social Worker, who met with him 12 times during that school year. [Testimony School Social Worker, Exhibit D1]
15. During the summer of 2010, the Student attended Arms Acres, a residential adolescent substance abuse program. [Exhibit B1a]
16. The 2010-11 school year again began very poorly for the Student. His first quarter grades for his academic classes were all unsatisfactory and included a 32 in Hum/His 11, a 65 in Civics, a 43 in Hum/Eng 10, a 45 in Bas Al II and a 40 in biology. [Exhibit B77]
17. On October 29, 2010, the Student received an external suspension for possession of drug paraphernalia in school. Prior to that suspension, the Student's disciplinary actions continued to escalate. In the first two months of school, the Student received twenty disciplinary actions resulting in detentions and three in school suspensions. His disciplinary referrals were for cutting classes, smoking in school, failure to serve detention, tardiness, dress code violations, disrespectful behavior to staff member, inappropriate behavior and cell phone usage. [Exhibit B64]
18. The Student received educational services at Bridgeport Detention Center from November 12, 2010 to November 23, 2010. [Testimony School Counselor; Exhibits B61, B70, B71]
19. Upon his departure from Bridgeport Detention Center, the Student was hospitalized at the Riverview Hospital for Children and Youth from November 23, 2010 to on or about December 21, 2010. His discharge diagnosis was depressive disorder nos, cannabis dependence, opiates abuse and parent-child relational problems. Axis IV of his discharge diagnosis includes "Divorce of parent[s] (2004); death of friend in motor vehicle

accident; legal problems; school problems (in spite of good cognitive endowment).” His Axis V GAF was 45. [Exhibit B115]

20. After the discharge from Riverview, the Student was admitted to the Child and Adolescent Behavioral Health Program at Waterbury Hospital. At the time of his admission his diagnosis was depression nos, cannabis dependence and parent child relational problem. His Axis IV stressors included problems with primary support, educational and legal, and his current GAF was 47. This information was provided in a report from Waterbury Hospital dated January 5, 2011. [Exhibit B72]
21. During the 2010-11 school year, a “Welcome Back” meeting was convened on December 20, 2010, when the Student was discharged from Riverview Hospital. The Student, the Vice Principal, the Father and the School Counselor met, and an action plan was set up to have the Student check in with the Vice Principal every morning and the school counselor once per week. [Testimony School Counselor, Exhibit B41]
22. On January 6, 2011, the District convened a 504 Meeting and found the Student eligible for 504 accommodations based on the January 5, 2011 diagnosis received from Samaria Massound, LMFT of Waterbury Hospital Child and Adolescent Behavioral Health. Based on the depression diagnosis, the District provided accommodations to the Student. [Testimony School Counselor; Exhibits B73, B74]¹
23. The District’s listed accommodations for the Student’s 504 plan included (1) drop chemistry and add skills lab and/or structured study hall, (2) ICAPS starts next week, (3) preferential seating, (4) provide only essential material to the Student for grading, (5) modify midterms to cover essential material, (6) teachers will use tactile cues to bring the Student back to focus, (7) the Student will receive an incomplete for 2nd marking period until work is all made up for each class. [Exhibit B74]
24. At the conclusion of the 2nd quarter which ended around January 20, 2011, in his academic classes the Student received a 68 in Hum/His 11, a 22 in Civics, a 68 in Hum/Eng 10, a 67 in Bas Alg II and a 67 in Biology. [Testimony School Counselor, Exhibit B77]
25. On February 17, 2011, the Student was withdrawn from the District schools because the Student was moving in with his Father who resided in a different school district. [Testimony School Counselor, Exhibit B78] He subsequently enrolled in the Shelton Adult Education High School Diploma Program.

¹ It is contradictory for the District to assert in this proceeding the claim that the Student’s decline was related solely to substance abuse, and then to have the District find the Student eligible for Section 504 accommodations in January 2011, as under Section 504, a student who is engaged in the illegal use of drugs is not considered a “qualified individual with a disability” and, therefore, not covered under Section 504. 29 USC §705(20)(B) By the District’s actions it can be concluded that the disabling condition of depression was separate and apart from the substance abuse.

26. During the time that the Student was attending the District's school, his school social worker noted that his grades would decrease when he would have admissions to various programs and when he was in the Bridgeport Juvenile Detention Center. He had three admissions for substance abuse violations at Bridgeport Juvenile Detention Center, and received services at The Children's Center of Hamden for substance abuse, Arms Acres (a residential adolescent substance abuse center), as well as Morris Foundation, Waterbury Hospital and Riverview Hospital. [Testimony School Social Worker, Exhibit B1a] The exhibits submitted do not support the conclusion that his academic decline could solely be attributed to substance abuse. Riverview Hospital is not a substance abuse treatment facility; it is a mental health facility and inpatient hospital for adolescents. [Testimony School Social Worker] Moreover, his academic progress was in decline prior to the timeframe that the Student was involved in substance abuse. [Exhibit B32, B42]²
27. While the Student was under his 504 plan, he was placed in the skills lab, a smaller version of a study hall with more opportunity for one to one attention. The Student was placed in the skills lab so that the teacher could ensure that he was on task and for organizational support. In the skills lab, the Student never accepted the special education teacher's offers to help out, did not request modification of his homework and completed his homework on his own. The Special Education Teacher did not see the Student struggling with any issues of focus in this small setting. [Testimony Special Education Teacher] His grades continued to be very unsatisfactory despite these interventions. [Exhibit B-77]
28. The Parent did not request an evaluation of the Student, nor did she request special education for the Student while the Student was attending the District's school. [Testimony Director]
29. Nevertheless, the Parent was frequently in contact with the District about her concerns for the Student throughout the time the Student was attending the District high school. For example, in an email on November 10, 2009, during the Student's sophomore year, the Parent wrote to the assistant principal of the high school: *"I would greatly appreciate any wisdom, advice, or guidance you, or Dr. Frank may have that I have not already received from his Counselor, Psychiatrist, Law Enforcement, WRHS, my family and my Church. I am completely frustrated and very concerned for [the Student's] well being and his future . . . if there are any sources of help that I am not currently pursuing (above) please let me know. . . . I thank you for your concern for my son and hope that you will share anything that might be helpful in helping [the Student] both personally and academically."* [Exhibit D6] These emails seeking help for the Student relate back to the beginning of the Student's freshman year, when the Parent emailed the school counselor that she

² The testimony of the School Social Worker was incomplete and unhelpful in that oftentimes she refused to answer questions or discuss the basis for her conclusions that she didn't feel the Student was self-medicating or that his decline could be attributed to substance abuse. She offered very little information as she felt it was confidential information she could not divulge. Based on the exhibits submitted, however, there is a compelling body of information that supports the conclusion that the Student's decline predated the substance abuse. He had been at goal in his earlier CMT in 4th grade [Exhibit B12], but by 6th, 7th and 8th grade, he was no longer meeting goal in all areas, dropping to the basic level in reading by 8th grade. [Exhibits B17, B22, B29]

“would like to remind all parties involved that [the Student] has had memory/retention problems throughout his school years, likely as a result of meningitis at 7 weeks of age, lead exposure as a toddler, or both (per his pediatrician). I am hoping that, together, we can arrange the help he needs to succeed.” [Exhibit D8]

30. From the Student's freshmen year until the Student was withdrawn from the school in January 2011, the school counselor had frequent telephone conversations with the Parent. More than 50 voice mail messages were returned by the School Counselor, and additional phone calls were answered about the Student. [Testimony School Counselor] Through these contacts, and the additional emails and contact to other school personnel, the District had ample information that this Student had substantial need for additional interventions and was a Student in need of a referral for a special education evaluation.

DISCUSSION/CONCLUSIONS OF LAW:

The Parent brought this action in accordance with the Individuals with Disabilities Education Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. Students who are identified as eligible for special education are entitled to receive a free and appropriate public education (“FAPE”) pursuant to state and federal laws. See Conn. Gen. Stat. §§ 10-76 *et. seq.*; the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, *et seq.*

A local education agency has a “Child Find” obligation under IDEA, which is a duty to identify, locate and evaluate children who have a disability or who are suspected of having a disability. A.P. v. Woodstock Board of Education, 572 F. Supp. 2d 221, 50 IDELR 275 (D.Conn. 2008), citing 20 U.S.C. §1412(a)(4)(A) Students who are suspected of having a disability and who are in need of special education and related services are referred to a planning and placement team (PPT), which plans for an evaluation to determine whether the Student is a child with a disability under the IDEA. *Id.*

The evaluation must be comprehensive, ensuring that the student “is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and

emotional status, general intelligence, academic performance, communicative status, and motor abilities.” 34 CFR §300.304 (c)(4) In accordance with state regulations, provision shall be made for the prompt referral to a planning and placement team (PPT) of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance. Regs. Conn. Agencies §10-76d-7

If the Student is found to be a child with a disability, the PPT develops an individualized education program (IEP) for the Student. *Id.*

Child Find is an affirmative obligation. A parent is not required to request that a district identify and evaluate a child, and a parent’s failure to make such a request does not relieve the district of its child find obligation. *Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996) The Parent in this case asserts that the District failed in its child find obligation. A parent need not request a referral or an evaluation to trigger this obligation. No magic words need be spoken. The Parent sought help repeatedly as the Student was failing. The SST never reconvened, the grades continued to be unsatisfactory, the disciplinary referrals escalated and the District allowed the Student to fall through the cracks.

While it is appropriate to attempt interventions prior to referral for evaluation for special education, the District failed to take the steps necessary when the interventions were not working for this Student and while he continued to fail.

A student who is diagnosed with depression or is prescribed antidepressants will not automatically be found eligible for special education. Mere diagnosis does not result in eligibility. But a Student who is diagnosed with depression or prescribed antidepressants, who is also receiving unsatisfactory grades, disciplinary referrals, teacher reports of poor classroom performance and focus issues, along with the failure of the SST interventions should be referred

for a special education evaluation. The District staff was well aware as early as the summer of 2009 and earlier that the Student was struggling. The Parent had frequent communication to the District about her concerns. Emails from as early as the fourth quarter of the 2008-09 school year document teachers' concerns that the Student could not focus, was easily distracted, was making poor progress in the classroom and was unable to answer simple questions. The District should have responded by referring the Student for an evaluation.

Not all diagnoses result in identification. Moreover, substance abuse is not a disabling condition under IDEA. The depression, however, did adversely affect the Student's educational performance. The Student's mood, behavior and academic problems did not relate solely to his substance abuse. With such a long record of poor grades and inconsistency, the child find responsibilities were triggered but ignored. There were a number of times when the District failed to follow up with the Student as he continued to fail.

A person who is a substance abuser may be eligible as emotionally disturbed if, without consideration of the drug abuse and the resulting behavior, he meets the criteria of 34 CFR 300.8(c)(4) Emotional Disturbance under IDEA. That criteria is:

"a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) an inability to learn that cannot be explained by intellectual, sensory or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

The Student did have a general pervasive mood of unhappiness or depression over a long period of time to a marked degree that did adversely affect his educational performance which both predated and continued through his later substance abuse issues. The Student was ultimately hospitalized for mental health, not substance abuse reasons. He has been under the care of a psychiatrist for years and continued to struggle with depression throughout this time.

The District failed to take the appropriate steps to refer the Student for evaluation and find him eligible for special education while the Student's academics continued to decline. Eventually the Student withdrew from school and enrolled in an adult education school diploma program. This result is one that should have been avoided and is why child find is such an important obligation for school districts.

The Student is entitled to a comprehensive evaluation and compensatory education as a remedy for the District's failure in its child find obligations, in its failure to refer the Student for evaluation, and its failure to find the Student eligible for special education and related services.

In the request for due process, the resolution of this matter sought by the Parent included restitution of lost credits, protection of the Student's legal rights as well as for other students who may not be receiving the educational modifications due to School/Administration oversight and sanctions and oversight of Region 16 adherence to the laws. Much of what the Parent is seeking is not a remedy in a due process case, but could possibly be a remedy in a complaint filing or another forum.

In this case, the Student was not provided an evaluation; therefore he is entitled to a comprehensive evaluation by a Connecticut licensed neuropsychologist or Connecticut licensed psychologist selected by the Parent. In addition, if the psychologist determines it is necessary and appropriate to have a psychiatric evaluation, then the District shall also fund a psychiatric

evaluation by a Connecticut licensed psychiatrist. The completed evaluation shall include appropriate educational recommendations for the Student.

The Student is no longer a student in the District. Nevertheless, the District must provide the Student with restoration of the credits that he did not earn while he was enrolled as a student in the District. To enable him to gain these credits, the Student is entitled to tutoring to be provided to him for the failure of the District to evaluate, find him eligible for special education and provide him with an appropriate education. The Student shall receive 10 hours per week of tutoring by a Connecticut licensed teacher who is qualified to teach high school subjects. The tutoring shall be provided for a total of 32 weeks. The Board shall provide a list of qualified tutors from which the Parent can select the appropriate tutor[s]. The tutoring shall be provided either in the Region 16 area or in the Connecticut location of the Father if the Student is currently residing with the Father. The tutoring shall be directed at enabling the Student to receive the education that the District failed to provide to the Student and the District shall provide the Student full restoration of all credits upon completion of the tutoring.

If the Student returns to the District, the District would have the obligation to convene a PPT meeting and develop an IEP for the Student. The tutoring ordered as compensatory education in this decision would be above and beyond the special education and related services that this District, or any other Board, would be obligated to provide the Student under its obligation to provide a free appropriate public education to a Student who is eligible for special education.

FINAL DECISION AND ORDER

1. The Board failed under child find to identify the Student as eligible for special education from the 2009-10 school year through February 2011 when the Student withdrew from the District.
2. While the Student was enrolled at the Board schools, the Student was eligible for special education under the category of Emotional Disturbance.
3. The Student is entitled to compensatory education, which shall include a comprehensive evaluation as fully outlined in this decision as well as 10 hours per week of tutoring for a total of 32 weeks as outlined in this decision.