

Student v. Connecticut Technical High School System

Appearing on behalf of the Student: Surrogate Parent, *Pro se*

Appearing on behalf of the Board: Attorney Christine Chinni
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30 Avon Meadow Lane
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Appearing before: Attorney Brette H. Fitton, Hearing Officer

FINAL DECISION AND ORDER**ISSUES:**

1. Did the Board err when the Planning and Placement Team determined that the Student no longer needed special education services during the PPT meeting held December 5, 2011 and reconvened January 19, 2012? If such error occurred, should the services identified in Student's Individualized Education Program (IEP) prior to her exit from special education be reinstated?
2. If the Board erred in exiting the Student from special education, has the Student been denied a Free Appropriate Public Education (FAPE)?
3. Did the Board fail to provide the special education services that were set out in the Student's April 7, 2011 IEP, and if so, did such failure deny the Student a FAPE?

PROCEDURAL HISTORY:

Student's Surrogate Parent filed a hearing request on January 30, 2012. An impartial hearing officer was appointed on January 31, 2012 and a prehearing conference was held on February 9, 2012. The original deadline for the mailing of the final decision and order was April 14, 2012. At the prehearing conference, the Surrogate Parent announced her intention to file an amended request for due process. There was no objection from the Board to the filing of an amended request, which was filed on February 16, 2012 and the request was granted. Pursuant to 34 C.F.R. § 300.508(d)(4) the deadline for the mailing of the Final Decision and Order was extended to May 2, 2012. The parties participated in a resolution meeting on February 9, 2012. No agreement was reached during this meeting. The matter proceeded to a hearing which was convened and completed on March 19, 2012.

SUMMARY:

The Student has been enrolled in Wilcox Technical High School since entering as a freshman in the 2008-2009 academic year. At the time Student entered high school, she had already been identified as a child with a disability under the category of Other Health Impaired, Attention Deficit Hyperactivity Disorder and determined to be in need of special education services. The Board developed an IEP for the Student who received special education services pursuant to the IEP, as modified from time to time, through the Board's special education program.

In April 2011, at the end of Student's eleventh grade year, the Board's Planning and Placement Team (PPT) recommended that it would be appropriate to exit Student from special education based on the results of a triennial evaluation. The Student's Surrogate Parent, foster parent, and social workers disagreed with the decision to exit and the PPT decided to retain the Student in the special education program, and revisit the issue of exiting the Student at the Student's annual review in December of 2011.

At the PPT meeting on December 15, 2011, which was continued to January 19, 2012 the PPT decided to exit the Student from special education. The Surrogate Parent, foster mother, and social workers disagreed with the Board's decision to exit the Student and the Surrogate Parent requested a hearing pursuant to the requirements of 34 C.F.R. § 300.502.

FINDINGS OF FACT:

From a review of all documents entered on the record of the hearing and testimony offered on behalf of the parties, I make the following Findings of Facts:

1. The Student was born on May 5, 1993 and is 18 years of age. Student has attended Wilcox Technical High School for all four years of her high school program. (Exhibits B-1; B-5)
2. During the 2010-2011 school year, Student was eligible to receive special education and related services as a student identified under the disability category of Other Health Impaired - Attention Deficit Hyperactivity Disorder. (Exhibit B-1)

The May 12, 2010 IEP

3. The Student's Individualized Education Program (IEP), dated May 12, 2010, provided that Student was to receive the following services in the regular classroom: four hours of direct instruction per technical week and six hours of co-taught instruction per academic week. (Exhibit B-1) The IEP also provided that Student was to receive 3 hours per academic week of strategic tutoring in a resource/related services room setting. (Exhibit B-1) These services were needed to address Student's identified goals of increasing comprehension and retention of information for class tests and increasing test preparation skills. (Exhibit B-1)
4. In the May 12, 2010 IEP, PPT stated that the resource room component of Student's IEP was necessary to address Student's weaknesses with working memory, reading and test-taking skills. (Exhibit B-1)

5. In addition to direct instruction, the May 12, 2010 IEP also specified that Student should receive accommodations in the form of extended time and alternate locations for testing, posting of assignments and extra drills and testing. (Exhibit B-1)

6. Two goals related to transition were also identified in Student's IEP: practicing needed postsecondary education strategies and following trade rules and procedures. Student's desires and plans regarding transition were also discussed during the PPT meeting. (Exhibit B-1)

7. The PPT recommended a reevaluation which was planned for April 2011, and which would utilize the following measures: achievement, classroom observation, cognitive, social emotional behavior, teacher reports. The last evaluation had been conducted on April 7, 2008, which meant that the April 2011 evaluation would be a triennial evaluation for Student. (Exhibit B-1)

The Triennial Evaluation and April 4 and April 7, 2011 PPT Meetings

8. As contemplated in the May 2010 IEP a triennial evaluation was conducted and a PPT meeting held on April 4, 2011. This meeting was adjourned due an absence of testing results and reconvened on April 7, 2011. The stated purpose of this meeting was to review or revise IEP, conduct annual review, review reevaluation, transition planning and review cognitive and behavioral testing which had been recently completed. (Exhibit B-2)

9. At the April 7, 2011 PPT meeting, the following assessments were discussed: cognitive testing, educational testing, standardized testing, student achievement, review of records, classroom observation social emotional behavior and teacher reports. (Exhibit B-2)

10. The testing conducted by the school psychologist indicated that while Student's short term auditory memory was in the low average range, academic achievement demonstrated that the memory weakness did not negatively impact her academic achievement. (Testimony Ms. Tweedie; Exhibit B-2)

11. The educational evaluation, which had included the Woodcock Johnson III Tests of Achievement from September 19, 2010, Student's junior year, showed the Student to be in the low average range for English oral skills, English listening comprehension skills, fluency with academic tasks and knowledge of phoneme-grapheme relationships. (Exhibit B-2) The evaluation also showed the Student to be in the average range for broad reading, basic reading skills, math calculations skills, math reasoning, basic writing skills written expression, and English oral expression and in the high average range for reading comprehension. (Exhibit B-2)

12. Connecticut Mastery Testing completed in March of 2008, Student's 8th grade year, placed the Student at below basic in science, basic in reading, proficient in writing and at goal for mathematics. Student's scores in each subject matter fell below the average score for her school. (Exhibit B-2)

13. CAPT results from testing completed in March of 2010, Student's sophomore year, place the Student at goal in mathematics and writing and at proficient in science and reading. (Exhibit B-2) Student's reading and writing scores matched the average scores for the school in those subject areas. Student's science scores fell below her school's average score, while her math score exceeded it. (Exhibit B-2) A comparison of the CMT and CAPT scores showed growth of two standard measures. (Testimony of Ms. Leib)

14. During the April 7, 2011 meeting the school team raised the possibility of exiting the Student from the special education program. (Testimony of Foster Parent) Foster parent, Surrogate Parent and Student's social workers expressed concern over the Student's educational supports being removed and objected to exiting the Student in connection with perceived difficulties with receptive and expressive communication and mental health issues. (Testimony of Foster Parent) The PPT agreed to discuss these concerns at the December 2011 PPT. (Testimony of Ms. Leib; Exhibit B-2)

15. At the close of the April 7, 2011 PPT meeting, the PPT agreed to continue Student in special education and significantly reduced the hours of services provided to the Student. The IEP from the April 7, 2011 PPT meeting specified that Student was to receive strategic tutoring and transition services for .12 hours per academic week with the Guidance Counselor in his office. The IEP also specified that the Student was to receive Strategic Tutoring for Trade Theory, Technology and Theory for .12 hours per technical week. This service was to be given in the general education classroom. The designation of .12 hours works out to be roughly 6 or 7 minutes. The IEP also contains a statement that [Student] will report to guidance for 10 minutes a cycle to address self-advocacy and transition. (Testimony of Ms. Leib; Exhibit B-2)

16. The schedule of the Wilcox Technical School differs from that offered in traditional high school setting, in that Students alternate between academic and technical cycles. (Testimony of Mr. Keith) The number of days in each academic and technical cycles may vary but in general such cycles range from 9 to 15 days in length. (Testimony of Ms. Leib)

17. Between the April 2011 PPT meeting and the January 19, 2012 PPT Meeting, Student's guidance counselor regularly saw Student in the guidance office for six minutes each during every academic cycle. The Guidance Counselor also had informal meetings with Student outside the guidance office. (Testimony of Mr. Keith) During this same period the teacher providing direct special educational services to the Student provided over .12 minutes per cycle in services to the Student. (Testimony of Ms. Sheehan)

The December 15, 2012 IEP

18. On December 15, 2011 the PPT convened for Student's annual review. In accordance with the April 7, 2011 IEP, the December 15, 2011 PPT meeting was to address issues of transition and exiting the Student from special education. (Exhibit B-2) A discussion was held between the school team members and Student's foster mother, social workers, and Surrogate Parent regarding the school team's belief that Student's disability did not negatively impact her

education, and she therefore does not need specialized instruction. (Exhibit B-2) Student's foster mother, Surrogate Parent, Institute of Professional Practice social worker, Department of Children and Families social worker and the Student disagreed with the team's recommendation that Student be exited from special education. A letter from the Student's psychiatrist was reviewed by the team. (Exhibits B-2; P-1) Due to a scheduling issue for the Surrogate Parent, the meeting was adjourned and scheduled to reconvene on January 19, 2012. (Exhibit B-2) In the interim, the Surrogate Parent was requested by the PPT to generate a list of proposed goals and objectives related to "self-advocacy" in order to address concerns she had regarding the existing goals and objectives for review by the PPT at the January meeting. Oral reports of the Student's progress toward objectives and goals were given, but no written reports submitted. (Testimony of Foster Parent)

The January 19, 2012 IEP

19. When the PPT reconvened on January 19, 2012, the PPT determined that the Student was no longer eligible for special education services. (Exhibit B-4) The PPT notes stated that per the school PPT members, the decision to exit was supported by educational performance, evaluation results, the fact that previous IEP goals and objectives has been satisfactorily achieved, and Student had met exit criteria. (Exhibit B-4)

20. At the January 19, 2012 PPT meeting foster parent and Surrogate Parent raised concerns regarding communication, expressive and receptive language delays along with a thought disorder that needs to be addressed. (Exhibit B-4) A list of new proposed goals and objectives for the Student was tendered by the Surrogate Parent. The PPT declined to adopt the proposed goals and objectives. (Testimony of Foster Parent) The list of proposed goals and objectives submitted at the January 2012 PPT was not offered into evidence and so the exact nature of what was proposed is unknown.

21. Student passed all coursework for 2010-2011 school year. As of March 6, 2012, the majority of Student's grades were B or higher for the 2011-2012 school year. Student's lowest grade was a 62 in Economics. (Exhibit B-5)

22. The Student holds the leadership position of senior mentor in both the academic and technical portions of her academic program; a position for which she was nominated by teachers. (Testimony of Ms. Tweedie) The Student has also earned the additional responsibility for the tasks associated with being a classroom recorder for her technical class teacher. (Testimony of Ms. Marinen) The Student demonstrated an ability to meet her responsibilities and was seen by school personnel to be an independent learner. (Testimony of Ms. Tweedie)

CONCLUSIONS OF LAW AND DISCUSSION:

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

Regulations of Connecticut State Agencies (R.C.S.A.) § 10-76h-14 sets out the Burden of Proof applicable to this matter provides in relevant part: "...the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence..."

1. Section 10-76d-9 of the R.C.S.A. requires that each child receiving special education and related services shall be reevaluated at least once every three years. 34 C.F.R. §300.303 contains a parallel requirement. In order to be in compliance with Connecticut and Federal Regulations a triennial evaluation of Student had to be completed by April 4, 2011. (Findings of Fact 7) The Board complied with these regulations. (Findings of Fact 8-13)
2. Pursuant to 34 C.F.R. § 300.305 (a)(2)(i)(B), the Board was required to examine whether the child continued to have such a disability and the educational needs of the child, when conducting its reevaluation. The Board was also required to examine whether the child continues to need special education and related services. 34 C.F.R. § 300.305 (a)(2)(iii)(B).
3. The determination that the child was no longer eligible for special education made by the Board after its reevaluation is at issue in this case. Pursuant to 20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305 (e) If a district believes that a student no longer requires special education or related services, it must reevaluate the student in all areas of suspected disability. The district may exit the child from special education if, after a comprehensive evaluation, it determines that the student does not need services to obtain a meaningful educational benefit. See *Victor Elementary Sch. Dist.*, 50 IDELR 204 (SEA CA 2008).
4. 34 C.F.R. §300.304(b) sets out the criteria for appropriate evaluation procedures. Under 34 C.F.R. §300.304 (b) (1) the Board is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under 34 C.F.R. §300.8. As outlined in the April 7, 2011 IEP documents, the Board utilized a variety of assessment tools and strategies when gathering information for its eligibility decision. (Findings of Fact 9-13)
5. Under 34 C.F.R. §300.304(b)(2) the Board must not use a single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child. The Board relied on the content of a number of different assessments and measures and identified several different bases for making its eligibility determination. (Findings of Fact 19)
6. Under 34 C.F.R. § 300.304(b)(3) the Board is mandated to use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. No claim has been made, nor evidence offered to suggest that the instruments relied upon by the PPT in making their decision to exit the Student were not sound.
7. Eligibility for special education as a student with Other Health Impairment, is governed by 34 C.F.R. §300.8(b)(9). This section sets out a conjunctive test for eligibility. In order to

qualify under this section a student must have limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment. It must then be shown that such conditions are due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome. Finally it must be shown that the impairment adversely affects a child's educational performance. 34 C.F.R. § 300.8(b)(9)(ii).

8. The assessments and evaluative measures relied upon by the PPT in making its eligibility determination on January 19, 2012 showed that the Student had developed strategies to compensate for her ADHD and that her disability was no longer adversely affecting her educational performance. Standardized tests placed Student at the proficient or goal levels in major subject areas. (Findings of Fact 13) As evidenced by her academic transcript, despite a near total reduction in her supports and services beginning in April 2011, Student had continued to succeed in the regular education curriculum throughout her senior year. (Findings of Fact 15 and 22) Student was able to independently advocate for her interests. (Findings of Fact 23)

9. Student's guidance counselor and special education teacher testified credibly that they each had regularly provided to the Student the .12 hours of services during the academic and technical cycles that were required in the April 7, 2011 IEP. (Findings of Fact 15, 16 and 17) The Surrogate Parent presented no evidence to establish that such services had not been provided, either through documentation or testimony. The Surrogate Parent's claim that services were not provided to the Student is unsupported by the evidence.

The Final Decision and Order sets forth the Hearing Officer's summary, findings of facts and conclusions of law. The findings of facts and conclusions of law set forth herein, which reference certain exhibits and witness testimony are not meant to exclude other supported evidence in the record. All evidence presented was considered in deciding this matter. To the extent that the summary, procedural history and findings of fact actually represent conclusions of law, they should be so considered by the Hearing Officer and vice versa, *SAS Institute, Inc. v. S&H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D.) Tenn. 1985); *Bonnie Ann F. v. Callallen Ind. Sch. Bd.*, 835 F. Supp. 340 (S.D. Tex. 1993).

All motions and objections not previously ruled upon, if any, are hereby overruled.

FINAL DECISION AND ORDER:

1. The Board's PPT did not err when it determined that the Student no longer needed special education services during its December 5, 2011 and January 19, 2012 meetings. As no error occurred, the services and supports previously provided to Student pursuant to her April 4, 2011 IEP do not need to be reinstated.

2. Student was not denied a FAPE as a result of the PPT's decision to exit the Student from special education.

3. Student was provided with the special education services specified in the April 4, 2011 IEP and thus, no denial of FAPE occurred as a result of failure to provide such services.

The Board's decision to exit the Student is upheld.