

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Greenwich Board of Education

Appearing on behalf of the Student:

*Pro se*

Appearing on behalf of the Board:

Attorney Abby Wadler  
Law Department, Town of Greenwich  
101 Field Point Rd., Greenwich, CT 06830

Appearing before:

Attorney Mary Elizabeth Oppenheim  
Hearing Officer

**FINAL DECISION AND ORDER**

**ISSUE:**

Whether the behavior that has resulted in the pending disciplinary action was caused by, or had a direct and substantial relationship to, the Student's disability; or if the conduct in question was the direct result of the Board's failure to implement the IEP.

**SUMMARY:**

This Student, who is eligible for special education and related services under the primary disability of emotional disturbance, was expelled from the Board school due to an out of school arrest for sexual assault based on a sexual encounter with another minor, three years his junior. A manifestation determination meeting convened, and the Board staff agreed that the behavior resulting in the disciplinary action was not caused by and did not have a direct and substantial relationship to the Student's disability and the conduct in question was not the direct result of the Board's failure to implement the IEP. The Parent requested this hearing, seeking an order to allow the Student to return to school.

**PROCEDURAL HISTORY:**

The Parent requested this hearing on November 10, 2011. A prehearing conference convened on November 15, 2011 and the hearing convened on December 8, 2011 within 20 school days of the filing of this request for hearing. A resolution session was convened on November 22, 2011.

The Parent did not present any witnesses and did not submit any exhibits. She noted on the record that she wanted the expulsion overturned and the Student returned to school. The Board's sole witness was Barbara Varanelli, administrator of the Board alternative school. The Board submitted exhibits B-1 to B-6.

This case proceeded as an expedited hearing. The hearing date was convened within 20 school days of the request for hearing and this decision is issued within 10 school days of the closing of the evidentiary hearing in accordance with 34 CFR §300.532(c).

To the extent that the procedural history, summary and findings of fact actually represent discussion/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)

### **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 currently 17 years old and was initially suspended and has been expelled from the Board high school since last school year, subsequent to the manifestation determination PPT meeting on May 24, 2011. [Testimony Ms. Varanelli, Exhibit B-5] The Board reported that the expulsion hearing was reopened on December 2, 2011 to consider additional information. [Record, submission by Board's attorney, 11/23/11]
2. The Student is identified as eligible for special education and related services with the primary disability of emotional disturbance. [Exhibit B-3]
3. The Student's most recent psychological evaluation, completed by the Board school psychologist in April 2010, describes the Student as having significant and complex weaknesses in his emotional functioning. While the Student's greatest area of concern was found to be depression, the report also noted that there are significant attentional issues and impulsivity, as well as other emotional issues present. The report noted that the Student has difficulty in emotional regulation and reportedly has poor self-control, changes moods quickly and can act out of control, according to his parent. The report also noted that the Student had clinically significant concerns for social skills, leadership and functional communication, including concerns in the area of appropriate conduct when interacting with others. The BASC-2 responses also noted that he does not work well under pressure, does not adjust well to new situations, loses his temper too easily, acts out of control, is easily upset and has poor self-control, all areas recommended for proactive interventions by the school psychologist. [Exhibit B-2] The IEPs submitted by the Board do not reflect that the Board included appropriate interventions in the Student's IEP as recommended by the Board school psychologist.
4. While the conduct that was the subject of the disciplinary action reportedly occurred in January 2011, the Board failed to submit the IEP that was in place as an exhibit in this hearing. It was reported, however, that the Student was failing all of his classes at that time, prior to his transfer into the Arch program. [Testimony Ms. Varanelli]

5. At the PPT meeting of April 14, 2011, the Student's program was changed in that revisions were made to the goals, and the Student's program was changed to the Arch program, which is the Board's alternative school for students who are not successful at the high school. [Testimony Ms. Varanelli, Exhibit B-3]
6. The Student was not successful when his program was changed to the Arch program, and shortly after he was placed in the Arch program, another revision occurred in his IEP on May 16, 2011. The Board proposed changes to the goals and a modification to the Student's IEP without convening a PPT. A notice was sent to the Parent for the May 16 amendment to the Student's IEP. [Exhibit B-4]
7. A manifestation determination PPT meeting convened on May 24, 2011. At that time, the Board members of the PPT did not find that the behavior was a manifestation of the Student's disability. [Testimony Ms. Varanelli; Exhibit B-5] In the worksheet for the manifestation determination, the Board described the nature of the Student's disability as "significant concerns for depressive symptomology, elevated scores of locus of control and a sense of inadequacy." The worksheet noted that there were charges of sexual assault pending and that the teacher's observations of the Student were that he was defiant, he was suspended for leaving school and he doesn't follow the rules. The Board staff noted on the worksheet that the Student does know the difference between right and wrong as justification for failing to find a causal connection between the behavior and the Student's disability. [Exhibit B-1]
8. While the Board administrator testified that the IEP was reviewed at the manifestation determination PPT meeting, the administrator referred to the May 16, 2011 IEP as the IEP that was reviewed. The May 16 IEP was not the IEP that was in place at the time of the incident resulting in the disciplinary action which occurred several months prior to the manifestation review, and prior to the Student's program revisions that occurred in the April and May 2011 versions of the Student's IEP. [Testimony Ms. Varanelli; Exhibits B-1, B-4] Because the Board failed to review the IEP that was in place at the time of the behavior which resulted in the disciplinary action, the Board did not appropriately complete the inquiry about whether the conduct in question was the direct result of the Board's failure to implement the IEP.
9. The behavior that was the result of the disciplinary action involved an arrest for consensual sex that allegedly occurred outside of school between the Student and another student from the Board schools who was three years younger than the Student. At the hearing, the behavior was referred to as a sexual assault and also a sexual encounter. The charges subsequently were dropped. [Testimony Ms. Varanelli]
10. While the Student was attending the Board's alternative school, his behavior continued to be problematic and consistent with the behaviors and emotional issues noted in the Student's evaluation. The Student had difficulty settling into the program, had poor self-control, wasn't compliant with the rules and had difficulty interacting with others. [Testimony Ms. Varanelli, Exhibit B-2]
11. At the manifestation determination PPT meeting, the school based members of the team concluded that the Student's disability was not related to his misconduct. They also concluded

that the IEP was being implemented as discussed and written. [Testimony Ms. Varanelli, Exhibit B-1, B-5]

12. The Student's conduct in question, which is the subject of the disciplinary action and the manifestation determination, relates to the Student's disability. The Student is identified as eligible for special education under the disability of emotional disturbance. Along with depressive symptomology, the Student's emotional disturbance disability includes additional concerns of impulsivity, weaknesses in social skills, poor self-control, loss of temper and concern in the area of interacting with others, as well as other emotional issues. His disability had a direct and substantial relationship to the alleged misconduct which resulted in his expulsion from the Board schools.
13. The Parent brought this hearing request to return the Student to school and, therefore, to challenge this manifestation determination. [Exhibit H.O.-1]

#### **DISCUSSION/CONCLUSIONS OF LAW:**

The Individuals with Disabilities Education Improvement Act of 2004 [IDEA] provides for services to children with disabilities. The Student has been found eligible for special education services, and is afforded the protections of the Act and related regulations.

The IDEA provides that prior to the change of placement of a child with a disability due to violation of school rules, a manifestation determination must be completed. This provision provides that:

“ . . . within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine -

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.” 20 U.S.C. §1415

If the LEA, the parents and the other members of the IEP team determine that either sub-clause is applicable for the child, the conduct is determined to be a manifestation of the student's disability. *Id.*

In this case, the Student's behavior that has resulted in the disciplinary action was caused by, and had a direct and substantial relationship to, the Student's disability and was the disruptive behavior characteristic of the Student's disability.

This manifestation determination meeting failed in its inquiry as to whether the IEP was implemented. The Board used the incorrect IEP when making this analysis.

The manifestation determination meeting serves an important purpose. It is not a rubber stamp of the disciplinary action taken by the Board. It must be a good faith inquiry into whether the behavior was directly related to the Student's disability and whether it directly related to the failure to implement his IEP. That did not occur in this case.

The review of the conduct in question and the Student's disability necessitates the finding that the behavior directly and substantially related to the Student's disability. The manifestation review was inappropriately narrow in this analysis as the Student's disability of emotional disturbance manifests itself in complex ways. The Board also failed to appropriately review whether the conduct related to the Board's failure to implement the IEP as the Board did not review the IEP that was in place at the time of the incident, the one in place when the Student was failing every class and when the Student allegedly participated in the behavior resulting in the Board's discipline of the Student.

The behavior that has resulted in the disciplinary action was caused by, and did have a direct and substantial relationship to, the Student's disability. Furthermore, the Board failed to appropriately review whether the Student's conduct was a direct result of the Board's failure to implement the IEP.

The IDEA allows the hearing officer broad discretion in providing appropriate relief in light of a violation of IDEA. *Burlington Sch. Comm. v. Mass. Dept. of Educ.*, 471 U.S. 358, , 556 IDELR 389 (1985)

The following relief, therefore, is hereby awarded:

1. The conclusion of the manifestation determination of May 24, 2011 is hereby reversed.
2. The expulsion and suspension of the Student for the conduct in question are hereby invalidated, and the Board shall correct the Student's records to note that the actions were a manifestation of his disability.
3. An outside behavioral consultant shall develop an appropriate behavioral intervention plan for the Student. An outside consultant is necessary as the Board has demonstrated that, even with three versions of the Student's IEP during the last school year, it had been unable to appropriately address his behavioral issues.
4. The Student shall be returned to his placement consistent with the current IEP of May 16, 2011, or some other placement if the Parent and the Board so agree.
5. The Board is hereby ordered to pay the outside behavioral consultant to perform a thorough functional behavioral assessment and to develop an appropriate behavioral intervention plan for the student. The consultant shall also determine whether any other additional evaluations of the Student are required. The procedure to be followed for selection of the consultant is as follows:
  - a. The Board's attorney and the Parent shall immediately attempt to agree upon the identity of the qualified outside consultant. If they do agree, the parties should skip to subparagraph d, with all timeframes correspondingly reduced;
  - b. If the parties do not agree before January 3, 2012, as to who shall be the outside consultant, the Parent may provide the names and addresses of three qualified consultants for the Board by the close

of business on January 5, 2012. The Parent may contact the State Department of Education to obtain a list of qualified consultants;

c. If the parties do not agree, the Board's attorney shall notify the Parent on or before the close of business on January 10, 2012 as to which of the three consultants has been selected by the Board from the list provided by the Parent;

d. Within two weeks of the receipt of the consultant's plan, the Student's IEP team shall convene and adopt the behavioral intervention plan for the Student, unless the IEP team agrees otherwise. At the same time, the Board shall conduct any additional evaluations found necessary by the consultant and make any changes to the Student's IEP that may be necessary in accordance with the consultant's recommendations.

e. In making recommendations concerning the behavioral needs of the Student, the consultant shall be permitted to make recommendations for other evaluations that the Student may need, and the Board shall provide those additional evaluations of the Student.

**FINAL DECISION AND ORDER:**

1. The behavior that has resulted in the pending disciplinary action was caused by and did have a direct and substantial relationship to, the Student's disability.
2. The conclusion of the manifestation determination of May 24, 2011 is hereby reversed.
3. The expulsion and suspension of the Student for the conduct in question are hereby invalidated, and the Board shall correct the Student's records to note that the actions were a manifestation of his disability.
4. The Board is hereby ordered to pay a qualified outside consultant to perform a thorough functional behavioral assessment and to develop an appropriate behavioral intervention plan for the Student. The consultant shall also determine whether any other additional evaluations of the Student are required. The procedure for selection of the consultant shall follow the process set forth in this hearing decision. The Board shall pay for any additional evaluations that the consultant determines are necessary for the Student.
5. The Student shall be returned to his placement consistent with the current IEP of May 16, 2011, or some other placement if the Parent and the Board so agree.