

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Waterbury Board of Education

Appearing on Behalf of the Parents:

Pro Se

Appearing on Behalf of the Board:

Lee Kennedy Tiernan, Esq.
City of Waterbury
Office of Corporate Counsel
235 Grand Street
Waterbury, CT 06702

Appearing Before:

Attorney Justino Rosado
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Has the Board performed procedural violations that impede the Student from obtaining a free and appropriate public education (FAPE) in the least restrictive environment (LRE)?
2. Should the Board provide the Student with an independent speech and language evaluation at the Board's expense?
3. Is the Student being bullied so that it that impedes the Student from obtaining a FAPE in the LRE?

SUMMARY:

The student has been identified with Speech and Language Disability and is entitled to receive a free and appropriate public education ("FAPE") as defined in the Individuals with Disabilities Education Improvement Act (IDEA) 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. At a March 28, 2011 individualized education program (IEP) meeting the Parent objected to procedural violations that impeded the Student from obtaining FAPE and requested an independent speech and language evaluation. The Board objected to the procedural violations and was willing to perform a speech and language evaluation. The Parent requested due process.

PROCEDURAL HISTORY:

This matter was presented as a contested matter 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 Administrative Procedures Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

On or about March 28, 2011, the Board received notice of the parent's request for due process. On April 1, 2011, a Hearing officer was appointed. The parties attended a resolution meeting on or about May 3, 2011. The parties were not able to resolve the matter. A hearing day of May 17, 2011 was chosen for this matter.

The Parent did not submit a witness list or documentary exhibits to the Board or to the hearing officer prior to the hearing as required by 34 C.F.R. § 300.512 (a) (3) and Section 10-76h-11 (a) (3), Regulations of Connecticut State Agencies (R.C.S.A.). The Board submitted 11 exhibits which were received as full exhibits of the hearing.

At the start of the hearing the parties resolved the second issue of this hearing and the Parent signed a consent form for a speech and language reevaluation. (Hearing Officer Exhibit¹ 4).

This Final Decision and Order set forth the Hearing Officer's summary, findings of fact 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 and Proposed 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). The date for the mailing of the Final Order and Decision was extended to accommodate the parties' mediation and the hearing date to June 11, 2011.

FINDINGS OF FACT:

1. The Student is currently a fifth grade student in the Board's school. The Student attends mainstream classes with pull out services 3 times a week for speech and language articulation. (Testimony of School Principal, Board Exhibits² 1 and 5)
2. At the commencement of the due process hearing the Parent and the Board came to an agreement on the speech and language reevaluation. The parent signed an agreement to reevaluate the Student for speech and language articulation. The Parent was issued a copy of the procedural safeguards. (H.O.-4, Testimony of Parent)
3. Parent alleges that the Student has frequently been bullied at school. When incidents were reported, the Principal investigated and when bullying was confirmed, she meted out appropriate punishment. Student is reluctant to make such reports because he fears retaliation. (Testimony, Parent, Principal of School)
4. The record showed 8 different incidents which might be construed by the Parent as bullying, but 7 of them were incidents which could happen to any Student during the course of a school day. One incident involving a talent show was reported by the Parent and investigated by the principal. The situation was resolved and the Student was welcomed to participate in the talent show. (B-2)

¹ Hereafter Hearing Officer's Exhibits will be noted as H.O. followed by the exhibit number.

² Hereafter Board's Exhibits will be noted as "B" followed by the exhibit number.

5. If the principal is aware of a situation involving the Student, the principal will be involved and resolve and punish the violators. (Testimony of Mother)
6. The Parent communicates well with the Principal and the Student is doing well in school. The Student currently receives grades of A and B. (Testimony of Parent)
7. The Parent alleges that school records were not being provided. The Parent did not state what records were not given to her nor was she able to provide any correspondence, email or record of any request for records that were not provided to her. (Testimony of Parent)
8. The Parent stated she did not receive the District's policy manual nor any notice that bullying can be reported to the State Department of Education. The Parent noted that she received the school policy manual and had in fact read it the weekend after receiving it. (Testimony of Parent, B-3)
9. In a prior due process request, the Parent also alleged that school records were not provided and the hearing officer found that no evidence was presented that would indicate records were not provided. (Testimony of Mother)
10. The Parent alleged that she did not receive the exhibits from the Board in a timely manner. The Board provided a certified receipt of the mailing of the exhibits on May 10, 2011. At the due process hearing, a copy of the exhibits was provided to the Parent and she did not object to them being presented as full exhibits of this hearing. (H.O.-3, Testimony of Parent)

CONCLUSIONS OF LAW:

1. It is undisputed that the Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Improvement Act, 20 U.S.C. Sec. 1401, et seq.
2. The most comprehensive test for determining whether any violation of the IDEA has occurred is set forth by the Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982). In *Rowley*, the Supreme Court reversed and remanded an order requiring the school to provide a deaf student with a sign-language interpreter in all of her classes. The Supreme Court held that the IDEA requirement of a "free appropriate public education" is satisfied when the state provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from the instruction. *Rowley*, 458 U.S. at 201, 102 S. Ct. at 3048. The child must receive "some educational benefit" from the education provided; the best possible education is not required. *Id.* In this matter, it is clear that the Student was receiving educational benefit. The parent and the principal stated that the Student was progressing educationally and there was no testimony or any indication that his IEP was not providing personalized instruction with sufficient support services in the least restrictive environment to permit the Student to benefit educationally from the instruction. (Findings of Fact No. 6)

3. The IDEA imposes strict procedural requirements on educators to ensure that a student's substantive right to a "free appropriate public education" is met, 20 U.S.C. Sec. 1415. These procedural requirements allow for participation of the parents or guardian throughout the development of the IEPs together with due process procedures to challenge questionable placements or decisions. Under *Rowley*, when a student's individualized education program is challenged, the Court undertakes a two-part inquiry to determine: (1) whether the procedural mandates of the act were followed and (2) whether the student received individualized educational services designed to provide some educational benefit. *Rowley*, 458 U.S. at 206, 102 S. Ct. at 3051. The parent has presented no evidence of any procedural violations of the IDEA. There was persuasive evidence that the Parent is an active participant on the Student's IEP team who is listened to by the other team members. Notice requirements were clearly adhered to and the Parent did not allege or present evidence that she was not properly and timely provided with the Student's educational records whenever she made a request for such records.

4. Bullying is a concern in schools throughout the country, and in Connecticut local Boards of Education are required under C.G.S. §§10-222d and 10-263e, to investigate all reports of bullying. Other statutes specify necessary policies and procedures, staff training and other related matters. When a report is substantiated, the confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g, regulations at 34 C.F.R. § 99) protect the identity of both victim and perpetrator. Issues related to parental access to a student's school records and the confidentiality of such records must be directed to school administration.

5. [S]tudents are the intended beneficiaries of "certain duties of care" from school officials during the school day. One of those duties is to protect students "from dangers that may reasonably be anticipated." *Robert J. Kendall, III, et al., Plaintiff v. West Haven Department of Education, et al., Defendants* 33 IDELR 270 (Nov.17, 2000) The incidents noted (Findings of Facts Nos. 3 &4) show that Board personnel exhibited reasonable care in these incidents, were fully aware of what was happening and took action to ensure the safety of all students. When the issue involved bringing toys to school, the parent was advised that toys are not allowed in school. When the Student's back pack was taken, the staff investigated and the back pack was returned to the Student with an explanation of how the incident happened. There was no testimony, exhibits or proof that the Student was being bullied or if it was happening, how it impacted his educational progress.

FINAL DECISION AND ORDER:

1. There was no evidence of any procedural violations that impacted or impeded the Student from receiving FAPE. If there were procedural claims raised by the Parent that are not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.
2. The claim concerning speech and language evaluations is moot as the parties have agreed to conduct the evaluation and a consent form has been signed by the Parent.
3. There was no evidence presented that the Student was/is a victim of bullying; any action by any Student was quickly investigated and acted upon by the District. The District kept the Parent informed of events that impacted the Student.