STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

Student v. Middletown Board of Education

Appearing on behalf of the Student:	*Pro se*[1]
Appearing on behalf of the Board:	Attorney Christine Chinni 30 Meadow Lane Avon, CT 06001
Appearing before:	Attorney Mary Elizabeth Oppenheim Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the Board's proposed program for the Student for ESY 2012 and the 2012-13 school year is appropriate;

2. If not, whether the Student shall be provided services through the Ryan Woods Autism Foundation for the summer 2012 and the 2012-13 school year as requested by the Parent.

PROCEDURAL HISTORY:

The Board received this request for hearing on June 6, 2012 filed by Brenda Wilson, founder and executive director of the Ryan Woods Autism Foundation (RWAF) on behalf of the Parent and the Student. [H.O.-1] Since this was filed by an advocate, and not an attorney or a pro se party, the Board did not forward the request to the state Department of Education immediately as it was unclear whether the Parent was filing a request for hearing. This matter was not assigned to the undersigned hearing officer until June 19, 2012.

A prehearing teleconference convened on June 25, 2012. The Parent; the Parent's advocate, Ms. Wilson and the Board's attorney participated in the prehearing conference. At the prehearing conference, the Parent, her advocate and the Board's attorney all agreed that the hearing would convene on July 12 and 16, 2012. The advocate indicated that she would submit a signed authorization that she would receive the notifications about the case on behalf of the Parent, as the Parent did not have email access.

At the prehearing conference, the parties reported that they did not agree to mediate this matter, and the Board's attorney was directed to email the hearing officer regarding when the resolution

[1] The Parent was advised by Brenda Wilson, her advocate, until the advocate abruptly terminated her advisory capacity as is discussed in the procedural history.

session was scheduled. At the first hearing date, the Board's attorney reported that the Parent had been uncooperative in convening a resolution meeting. Therefore, a resolution meeting was not convened.

On the same date as the prehearing conference and after the conference concluded, the Parent's advocate initially submitted an unsigned letter from the Parent with a notification regarding her advocate. When notified that an unsigned letter was submitted, the advocate resubmitted the letter, this time signed by the Parent. The letter notes that that Parent gives Ms. Wilson the authorization to act on her behalf, and notes that by "copy of this letter with my affixed signature, I am requesting that Brenda Wilson, my advocate, receive all correspondence pertaining to my case (i.e., emails, postal mail, etc.). She will see that I am given copies of all correspondence and made aware of all timelines and communicate for me and my son . . . from now to Resolution (sic)." [Exhibit H.O.-2] In this correspondence, it also references the dates of hearing in the third paragraph, noting that they had "requested there be no Mediation Process; however, we would like move straight to Resolution. The dates we all agreed upon July 12 or July 16, 2012 at a time deemed appropriate to all." By this submission, it appears that the advocate is using the term resolution interchangeably with the term hearing. The hearing notice for the hearing dates of July 12 and July 16, 2012 was sent to the advocate in accordance with the Parent's instruction, as well as to the Board's attorney.

On July 4, 2012 the advocate submitted a notice that she "will not continue to advocate" for the Parent, noting that the Parent "can choose to proceed on her own or find an attorney. I highly encourage the latter." The reason offered in the July 4th email was that the advocate believed that an email sent by the Board, which indicates that the Board would not agree to fund the program for the Student at RWAF, was sent to "motivate me to give up because the decision has already been made before we (the Parent and the advocate) can even be heard before the Board."

The hearing was scheduled to convene for the first hearing date on July 12, 2012 as set forth in the notice sent to the advocate per the instructions of the Parent and the Board's attorney. At the hearing, the Parent did not appear. The Parent was contacted by the Board, and a teleconference was convened with both parties and the hearing officer. The Parent did not indicate that she wanted to withdraw her claim, but did not want to appear for the hearing as she said she wanted to work it out with the advocate, although it wasn't clear whether she wanted to work out payment for the services at RWAF or whether she wanted further advice from the advocate who had terminated her advocacy.

The Board sought a dismissal with prejudice at the hearing, but that was not granted. Instead the Board was provided time to go forward with their case in a bifurcated manner to provide testimony regarding the appropriateness of the Student's program. See, Regs. Conn. Agencies §10-76h-14.

The Board's witness was Mindy Otis, Board supervisor of special education.

The Board submitted exhibits number B-1 through B-8, which were entered as full exhibits.

All exhibits and the testimony of the witness, as well as all email submissions which are part of the administrative record, were thoroughly reviewed and given their due consideration in this decision.

STATEMENT OF JURIDISCTION:

This matter was heard as a contested case pursuant to Conn. Gen. Stat. §10-76h and related regulations, 20 U.S.C. §1415(f) and related regulations, and in accordance with the Uniform Administrative Procedures Act, Conn. Gen. Stat. §§ 4-176e to 4-178, inclusive, §§4-181a and 4-186.

DISCUSSION:

This action was filed in accordance with the Individuals with Disabilities Education Improvement Act [IDEA] which provides for special education and related services to children with disabilities, from birth through age 21. It is undisputed that the Student is entitled to receive a free and appropriate public education ("FAPE") with special education and related services under the disability category of multiple disabilities pursuant to state and federal laws. See Conn. Gen. Stat. §§ 10-76 *et. seq.*; the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1401, *et seq.*

After careful review of the emails, exhibits and consideration of the testimony and statements made by the parties and the advocate, it is cannot be concluded that the Parent was aware that she was requesting a hearing in this matter and it cannot be concluded that the advocate appropriately kept her apprised of this matter. It is concluded that the advocate appears unaware of the hearing process, interchangeably using the word resolution and hearing, terms which denote distinctly different meanings. The advocate then precipitously abandoned her advocacy of the Parent approximately a week before the hearing. It is rudimentary that a person who purports to be an advocate must understand the hearing procedure, the law and the short and long-term impact of their advice on the students and families. That was lacking in this case.

It is troubling that the advocate is the executive director of the program which the Parent is seeking. Her advocacy of the Parent appears to be overreaching and a conflict of interest. The abandonment of the Parent one week before hearing because the advocate could not secure an agreement with the Board for placement at the advocate's summer and after school program and the apparent failure to appropriately apprise the Parent of the pending hearing was unprofessional.

At the hearing the Board did provide compelling and persuasive evidence that the Student's program as proposed by the Board is appropriate. On March 29, 2012, the Planning and Placement Team (PPT) met to develop an Individualized Education Program (IEP) for the Student for ESY 2012 and the 2012-13 school year. [Testimony Dr. Otis, Exhibit B-4] The PPT was quite familiar with the Student as they had worked with the Student in an intense way over the school year. The ESY program was planned at this PPT, based on the Student's extensive needs, which the Board recognized. The Student has autism/PDD, as well as additional learning issues. Based on his needs and the data collected about the Student, the PPT found that he was eligible for ESY services, which were set forth in the IEP. [Testimony Dr. Otis; Exhibits B-4, B-5]

The PPT convened again at the request of the Parent on May 29, 2012 to discuss the Parent's request for ESY and extended school day at RWAF. [Testimony Dr. Otis, Exhibit B-6] The Parent was present with her advocate at this PPT. The Parent was requesting services at RWAF because DCF has terminated funding for the services. The Parent and her advocate did not articulate that these services were necessary for the Student to receive FAPE. [Testimony Dr. Otis, Exhibit B-6] The RWAF program was started a few years ago by Brenda Wilson. Its mission is to provide recreational activities for people age 13 and up with autism spectrum

disorder. The program has no certified staff and is not an academic program. [Testimony Dr. Otis]

At the May PPT meeting the Board staff reviewed the Student's progress with the Board program. The Parent agreed that the Student was making excellent progress. [Testimony Dr. Otis, Exhibit B-6] The Student had received ESY programming in previous years at the Board program and his progress reports were reviewed at the PPT. [Testimony Dr. Otis, Exhibit B-3] The Student's record reflects that he had excellent grades and made honor roll. [Testimony Dr. Otis, Exhibit B-7] At this PPT, the Board did consider the Parent's request for services at RWAF and found these services were not necessary for the Student to receive FAPE. The Board members of the PPT rejected the request for funding of services at RWAF for ESY 2012 and the 2012-13 school year. [Testimony Dr. Otis, Exhibit B-6] The Student is currently attending the Board's ESY program that commenced on July 10, 2012. [Testimony Dr. Otis]

The standard for determining whether a FAPE has been provided is set forth in Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). The two-pronged inquiry set forth in Rowley asks first whether the procedural requirements of IDEA have been reasonably met and, second, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207

The second prong of Rowley is the determination of whether the Board offered the Student an appropriate IEP. The proper gauge for determining whether the IEP is substantively appropriate is the question of "whether the educational program provided for a child is reasonably calculated to allow the child to receive 'meaningful' educational benefits." Mrs. B. v. Milford Board of Education, 103 F.3d 1114, 1120 (2nd Cir. 1997). Meaningful educational benefits are "not everything that might be thought desirable by loving parents." Tucker v. Bay

Shore Union Free School Dist., 873 F.2d 563, 567 (2nd Cir. 1989). Rather, school districts are required to provide a "'basic floor of opportunity' . . . [by providing] access to specialized services which are individually designed to provide educational benefit to the handicapped child." Rowley, supra, 458 U.S. at 201; see also K.P. v. Juzwic, 891 F. Supp. 703, 718 (D.Conn. 1995) (the goal of the IDEA is to provide access to public education for disabled students, not to maximize a disabled child's potential)

The Board's proposed IEP for the Student includes appropriate goals and objectives that address the Student's demonstrated weaknesses. The proposed program is individualized and based on the Student's assessments and performance, and is provided in the least restrictive environment. The Student has made good progress in the program, including the summer program.

Because the IEP offers an appropriate program in the LRE, the Parent would not be entitled to reimbursement for ESY or extended school day services at RWAF.

Nevertheless, it cannot be concluded that the Parent knew and understood that the advocate filed the request for hearing. The advocate's communications to the hearing officer were unclear and reflect a poor understanding of the hearing process. The Parent did not appear for the hearing. When she was contacted via teleconference she was unclear about whether she knew she had a pending case and said she would bring this up with her advocate. Based on a careful review of the record, as well as consideration of the representations made to the hearing officer, it is concluded that the Parent does not want to proceed with the hearing and has not actively prosecuted her claims. Therefore, this matter shall be dismissed.

FINAL DECISION AND ORDER

This matter is DISMISSED.