

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. New Haven Board of Education

Appearing on behalf of the Student: *Pro se, by the Father*

Appearing on behalf of the Board: Attorney Marsha Belman Moses
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460

Appearing before: Attorney Mary Elizabeth Oppenheim
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the transportation provided in the Student's program for the 2010-11 and 2011-12 school years is appropriate;
2. If not whether the Board shall provide the transportation for the Student as requested by the Parent.

SUMMARY:

The Student is eligible for special education and has been offered van transportation in her IEP for the 2010-11 and 2011-12 school years. The Father, who has joint legal and physical custody of the Student, filed this request for hearing, seeking to alter the schedule of the van transportation to accommodate his schedule.

PROCEDURAL HISTORY:

The Board received this request for hearing [Exhibit H.O.-1] filed by the Father on May 6, 2011 and prehearing conferences were convened on June 7, June 9 and June 13, 2011. At the first two prehearing conferences, the Father was not available. The third prehearing conference was convened as a courtesy to attempt to secure the Father's attendance, and the Father and the Board's representative both participated in the third prehearing conference.

The hearing convened on one hearing date on June 28, 2011. The Father was the only witness testifying on behalf of the Student. The Board's witness was Typhanie Jackson, Board director of student services.

The Father did not submit any exhibits, nor did he submit a witness list. The Board submitted exhibits number B-1 through B-17, which are entered as full exhibits.

After the Father presented his case in chief on June 28, 2011, the Board's attorney requested that the case be dismissed. That request was taken under advisement, and the Board's attorney was directed to present evidence on the Board's offer of transportation to the Student. The Board director of student services provided such testimony. The granting of the dismissal is not necessary, as based on the testimony presented and exhibits submitted, the Board has prevailed on the merits of the case.

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 11 years old and is attending the Board's Celentano School. [Exhibits B-2, B-12]
2. It is undisputed that the Student is eligible for special education and related services under the category of autism.
3. The Parents are divorced and share joint physical and legal custody. The Parents' schedule for custody is decided by the Parents and is not pursuant to a court order. This schedule could be changed at any time by the Parents. [Testimony Father]
4. The Individualized Education Program [IEP] for the Student for the period of March 2010 to March 2011 included van transportation for the Student to the Mother's home. [Testimony Father, Board Director; Exhibit B-2]
5. The Student's IEP for the period of March 2011 to March 2012 also included van transportation for the Student to the Mother's home. [Testimony Father, Exhibit B-12]

6. The Board has offered van transportation to the Student to the Mother's address, and has consistently provided the van transportation in accordance with the IEP. [Testimony Father]
7. The Student was not denied a free appropriate public education [FAPE] due to the alleged lack of transportation and the Student had excellent attendance during the 2010-11 school year. [Testimony Father, Exhibit B-17]
8. At the time the Father was challenging the proposed transportation schedule, the Mother disagreed with the Father's proposal of changing the drop off or pick up location to the Father's residence. [Testimony Father]

DISCUSSION/CONCLUSIONS OF LAW:

The Father 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. 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 autism 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.*

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

Nothing in the record supports the conclusion that there were any procedural violations which resulted in a denial of FAPE to the Student.

The second prong of Rowley is the determination of whether the Board offered the Student an appropriate IEP. The proper gauge for determining 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). The Father testified that he agreed that the Student had been provided FAPE during the 2010-11 school year. As the transportation continues to be door to door transportation for the Student through the IEP for the 2011-12 school year, the Student’s transportation component of her IEP is appropriate. The Board’s IEP for 2010-11 school year and the IEP for 2011-12 school year provide door to door van transportation as a related service for the Student.

The Board has met its burden of proof, demonstrating by a preponderance of evidence that the IEP for the 2010-11 and the 2011-12 school year offers the Student a FAPE in the transportation that is being provided and offered to the Student.

Because the transportation provided in the IEPs for the 2010-11 and 2011-12 school years is appropriate, the Father is not entitled to his requested alternative transportation.

FINAL DECISION AND ORDER

1. The transportation provided in the Student’s program for the 2010-11 and 2011-12 school years is appropriate.
2. The Board is not required to provide an alternative transportation schedule for the Student as requested by the Father.