

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education and Bridgeport Board of Education

Appearing on behalf of the Surrogate Parent:

Pro Se

Appearing on behalf of the Norwalk Board:

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Appearing on behalf of the Bridgeport Board:

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Appearing before:

Justino Rosado, Esq.
Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Should the Board be allowed to graduate the Student at the end of the 2012-2013 school year?
If not;
2. Does the Student require another year at Meadow Ridge in order to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE)?
3. Was the transition plan proposed by the Board for the 2013-2014 school year appropriate?
4. Was the extended school year program for the summer of 2013 appropriate and did it provide the Student with FAPE in the LRE?
5. Is the program offered by the Board for the 2013-2014 school year appropriate and does it provide the Student with FAPE in the LRE?

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 Procedure Act, CGS §§4-176e to 4-178, inclusive, and 4-181a and 4-186.

PROCEDURAL HISTORY:

On February 4, 2014, the Norwalk Board received notice of the Surrogate Parent's request for due process. An impartial hearing officer was appointed on February 4, 2014 and a pre-hearing conference was held on February 12, 2014. On March 20, 2014, the Norwalk Board of Education filed a Motion to Dismiss. The Motion was denied. On April 10, 2014, the Surrogate Parent amended the due process request to add an additional issue and the Bridgeport Board of Education as a necessary party. The Norwalk Board of Education did not object. On April 22, 2014 a pre-hearing conference was held to review the amended complaint. The Bridgeport Board of Education filed an objection to the amended

complaint and to their status as a necessary party. The parties agreed to a briefing schedule. The Bridgeport Motion to Dismiss was denied. On July 14, 2014, the Bridgeport Board of Education renewed their Motion to Dismiss or in the alternative to bifurcate the proceedings. Both requests were denied.

The parties agreed to mediate the matter; the mediation was not successful. Hearing dates of March 18, 21 and 28; June 17; July 16, 18 and 28; and September 29, 2014 were chosen by the parties. Only the July 28 and September 29 hearing dates went forward, the other hearing dates were canceled by the parties.

The Norwalk Board of Education presented Exhibits 1 thru 17 which are full exhibits of the hearing. Surrogate Parent presented Exhibits¹ 1 through 28 which are full exhibits of the hearing. The Bridgeport Board of Education presented Exhibits² 1 thru 4 which are full exhibits of the hearing.

This Final Decision and Order sets 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, procedural history and findings of fact actually represent conclusions of law, they should be so considered and vice versa. SAS Institute Inc. v. S. & H. Computer Systems, Inc., 605 F.Supp. 816 (M.D.Tenn. 1985) and Bonnie Ann F.v. Callallen Independent School Board, 835 F.Supp. 340 (S.D.Tex. 1993).

The date for the mailing of the Final Decision and Order was extended to accommodate the hearing dates, mediation and medical issues presented by the parties. The date for mailing the Final Decision and Order is January 19, 2015.

SUMMARY:

The Student has been identified with Emotional Disturbance and is entitled to receive 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 et seq. The Surrogate Parent rejected the graduation of the Student at the end of the 2012-2013 school year. The Surrogate Parent requested placement at Meadow Ridge for an additional school year. The Board refused the Surrogate Parent's request.

FINDINGS OF FACT:

1. The Student is diagnosed with Emotional Disturbance and eligible to receive special education and related services as defined in the Individuals with Disabilities Education Improvement Act ("IDEA") 20 U.S.C. §1401 et seq. and Connecticut General Statute §10-76a. (Norwalk Board Exhibit³ No. 5).
2. On April 5, 2010, a PPT was held to determine the Student's eligibility for special education and related services. The team determined the Student was not eligible. The team opined that

¹ Hereafter Surrogate Parent's Exhibits will be noted as "P" followed by the number of the exhibit.

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

³ Hereafter Norwalk Board's Exhibits will be noted as "NB" followed by the number of the exhibit.

the Student's difficulties are due to non-educational issues. The Student was found 504 eligible and accommodations would be provided. The Parent agreed with this determination. (P-6)

3. At the December 1, 2011 PPT meeting, the Student was found eligible to receive special education and related services under the identification category of Emotional Disturbance. At the time, the Student was committed to DCF and had been placed at The Children's Center in Hamden, Connecticut where she was receiving her educational program. The Student was doing well academically. DCF planned to transfer the Student to the New Hope Manor Group Home and have her receive her educational program at The Summit Academy. (NB-5, Testimony of DCF Treatment Worker)
4. The Student refused to participate in a psychoeducational evaluation performed in December 2011. A prior evaluation conducted in 2008, showed that the Student had a full scale IQ of 111. Behavioral rating scales indicated concerns in attention problems, oppositional behavior and depression and anxiety. (P-8)
5. On April 12, 2012, the Student was discharged from The Children's Center in Hamden, Connecticut. The Student's grades at the time of discharge were in the 80 to 91 range. The teachers stated that the Student worked independently, displayed appropriate behavior, interacted appropriately with teachers, worked in an organized manner and demonstrated good efforts in class. (NB-8)
6. On April 12, 2012, the Student was transferred by DCF to Journey House in Mansfield, Connecticut, which is part of Natchaug Hospital. The Student's grades in the last quarter of her junior year were all As. (NB-9)
7. The Student turned 18 years old at the end of the 2012-2013 school year. The Student's rights under IDEA transferred to her on her birthdate. (P-1)
8. The Student was under the Department of Children and Families (DCF) guardianship from 2010 until her 18th birthday. At the termination of the DCF guardianship, the Student agreed to a voluntary commitment with DCF. (P-17, Testimony of DCF Treatment Worker)
9. On July 29, 2013, the Student signed a Surrogate Parent Service form and assigned the Surrogate her right to review and request educational records, advocate in all educational matters on her behalf, consent to evaluations and advise her regarding educational matters. (P-28)
10. The Student's 2012-2013 Individualized Education Program (IEP) showed that she was making progress in her three transitional goals and her behavioral goal. The Surrogate Parent did not object that the goals and objectives were not properly drafted nor raise any issues that the Student was not making satisfactory progress. (NB-16)
11. At the January 14, 2013 and the June 17, 2013 PPT meetings, the PPT team discussed the Student's graduation. The Student had earned more than the required 20 credits to graduate. (NB-17, P-1, P-2)

12. The Student's Surrogate was present at the January 14, 2013 and the June 17, 2013 PPTs. At the June 17, 2013 PPT, the Surrogate requested an extension of her IEP. The District confirmed that the Student would graduate. At this time the Surrogate was acting without the written authority of the Student. The Student was over the age of eighteen and did not sign a Surrogate Parent Service Agreement until July 29, 2103. The Surrogate had not spoken with the Student about her graduation. (NB-17, P-1, P-2, P-28, Testimony of Surrogate Parent)
13. The Educational Director of Journey House, the Student's educational placement, participated at the June 17, 2103 PPT meeting by telephone. The Director stated that the Student was making reasonable progress in her placement. She did not object to the Student receiving her diploma and being graduated. Based on the information received from Journey House, the Student was making progress on her goals and objectives. (Testimony of Norwalk Assistant Director (NAD))
14. The Surrogate did not agree that the student had earned enough credits to graduate. This was based on discrepancies regarding credits awarded June 2010, during her freshman year. At that time, the Student was in a DCF placement at The Children's Center. The Surrogate testified that prior to the June 17, 2013 PPT, he did not have any concerns about the Student's educational progress. (Testimony of Surrogate Parent)
15. On June 27, 2013, the State of Connecticut Department of Mental Health and Addiction Services ("DMHAS") placed the Student at JRI Meadow Ridge, a facility in Swansea, Massachusetts. This placement was determined by DCF, not at a PPT meeting. (Testimony of DCF Social Worker)
16. DMHAS would assume the responsibility for the Student's placement at Meadowridge upon the issuance of her diploma. The Student's Surrogate testified that he would provide Meadowridge with the Student's diploma. (Testimony of DCF Social Worker, Testimony of Surrogate Parent)
17. The Principal of Meadowridge testified that DCF had informed him that the Student had graduated. The Student told the principal that she thought she had graduated. The Student's placement was for medical needs. The Student's placement was a psychiatric placement and not based on educational needs. An estimate of when the Student would be exited could not be given. (Testimony of Principal of Meadowridge)
18. The Principal of Meadowridge opined that DMHAS would be responsible for the placement upon the receipt of her high school diploma. (Testimony of Principal of Meadowridge)
19. On March 27, 2014, DCF sent Bridgeport Board of Education a form informing the Board that the Student's mother had moved to Bridgeport in October 2013 and that the Bridgeport Public Schools was the Student's nexus. (BB-3)
20. The Parent did not make an effort to enroll the Student in the Bridgeport Public Schools. The Surrogate requested a PPT; this was denied because the Student had graduated from Norwalk High School. The Bridgeport Board made efforts to ascertain the Parent's residency in Bridgeport. Board employees went to the address provided by DCF but no one was present at the address. (Testimony of Bridgeport Special Education Supervisor)

21. The Surrogate was informed of his rights to object to the Bridgeport Board of Education denial of the request for a PPT. The Surrogate did not challenge the denial. There was no attempt to register the Student in the Bridgeport Public Schools. (Testimony of Surrogate Parent)

CONCLUSIONS OF LAW and ARGUMENT:

1. It is undisputed that the Student is eligible for special education and related services as set forth in IDEA, 20 U.S.C. Sec. 1401, et seq. FAPE is defined as special education and related services that are provided at public expense, meet the standards of the state educational agency, include an appropriate education, and that are provided in conformity with the IEP. 20 U.S.C. §1401(8).
2. Once a Board has identified a child as eligible for IDEA services, it must create and implement an IEP based on the student's needs and areas of disability. Boards are not, however, required to "maximize the potential" of each handicapped student. Bd. of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 197 n. 21 (1982)). Instead, to satisfy the IDEA, the Board must offer an IEP that is "reasonably calculated" to enable the child to receive "meaningful" educational benefit in light of the student's intellectual potential. Id. at 206-207. Once the Board has designed and administered an IEP that is reasonably calculated to enable the receipt of meaningful educational benefit, it has satisfied its obligation to provide the child with FAPE.
3. If the Parent or the Student is not satisfied or that the program will not provide FAPE, they can challenge the educational placement. 34 C.F.R. §300.507(a)(1). It is the Board's responsibility of proving, by a preponderance of the evidence, the appropriateness of the program and placement it has provided to the Student. Conn. Gen. Stat. (CGS) §10-76h-14(a).
4. The standard for determining whether a Board has provided a free appropriate public education is set forth as a two-part inquiry in Rowley. It must first be determined whether the Board complied with the procedural requirements of IDEA. The second inquiry is a determination of whether the IEP is "reasonably calculated to enable the child to receive educational benefits." Id. at 206-207.
5. The Surrogate Parent alleges that the Norwalk Board committed a procedural violation by not informing him of the Student's graduation. The Norwalk Board had no obligation to give notice to the Surrogate of the Student's pending graduation. At the time of the exit PPT, the Surrogate did not have the authority to represent the Student (Findings of Fact No. 12). The Surrogate had been present at the prior PPT, January 14, 2013, at which the PPT team was recommending graduating the Student on June 2013. Even though the Surrogate states that he did not have notice, he was present at the June 17, 2013 PPT where the only recommendation was the graduation of the Student. (Findings of Fact No. 12) The Surrogate had a copy of the Student's diploma. (Findings of Fact No. 16) The Student was aware she had graduated. (Findings of Fact No. 17). The Norwalk Board did not commit a procedural violation.
6. The second inquiry of the Rowley test specifically addresses whether the respective Student's IEP provided FAPE. Appropriateness is determined by focusing on what was or was not, objectively reasonable when a snapshot of the IEP was taken. D.F. and D.F. on behalf of N.F. v. Ramapo Central School District, 403 F3d. 595 (2d. Circuit 2005).

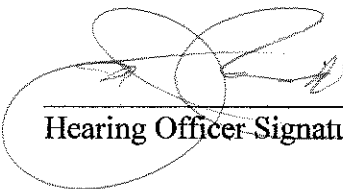
7. The Board fulfills its obligation under the second inquiry if it provides an IEP that is “likely to produce progress, not regression,” and if the IEP affords the Student with an opportunity greater than “trivial advancement.” Walczak v. Florida Union Free School District, 142 F.3d at 130.
8. The Student was making satisfactory progress in her IEP goals and objectives for the 2012-2013 school year. The Educational Director of the Student’s placement testified that the Student was making reasonable progress and was not opposed to her getting her diploma. The Surrogate Parent did not have any concerns about the Student’s educational progress. (Findings of Fact Nos. 10 and 14).
9. Connecticut General Statutes Section 10-221a(a) provides that for classes graduating high school from 2004 to 2019, inclusive, no local or regional board of education shall permit any student to graduate from high school or grant a diploma to any student who has not satisfactorily completed a minimum of twenty credits, not fewer than four of which shall be in English, not fewer than three in mathematics, not fewer than three in social studies, including at least a one-half credit course on civics and American government, not fewer than two in science, not fewer than one in the arts or vocational education and not fewer than one in physical education. The Student had fulfilled the credit requirements to graduate. (Finding of Fact No. 11) The Student was properly graduated at the end of the 2012-2013 school year.
10. DCF filed Form 603 on March 27, 2014, giving the Bridgeport Board of Education notice that in October 2013, the Student’s Parent had moved to Bridgeport making Bridgeport Public Schools the Student’s nexus. (Finding of Fact Nos. 19 and 20) Since the Student was properly graduated at the end of the 2012-2013 school year, Bridgeport has no FAPE obligations to the Student. The IDEA regulations state that the obligation to make FAPE available to all children with disabilities does not apply with respect to students with disabilities who have graduated from high school with a regular high school diploma. §300.102 (a) The obligation to make FAPE available to all children with disabilities does not apply with respect to the following: (3)(i) Children with disabilities who have graduated from high school with a regular high school diploma.
11. To the extent a procedural claim raised by the Surrogate Parent is not specifically addressed herein, the Hearing Officer has concluded that the claim lacked merit.

FINAL DECISION AND ORDER:

1. The Student was properly graduated at the end of the 2012-2013 school year.
2. Since the Student was properly graduated, the Norwalk Board of Education does not have to pay for the Student’s placement at Meadowridge.
3. Since the Student was properly graduated, the Norwalk Board of Education does not have to provide a transition plan for the 2013-2014 school year.
4. Since the Student was properly graduated, the Norwalk Board of Education does not have to provide an extended school year program for the summer of 2013.
5. Since the Student was properly graduated, the Norwalk Board of Education does not have to offer a program for the 2013-2014.

If the local or regional board of education or the unified school district responsible for providing special education for the student requiring special education does not take action on the findings or prescription of the hearing officer within fifteen days after receipt thereof, the State Board of Education shall take appropriate action to enforce the findings or prescription of the hearing officer.

Appeals from the hearing decision of the hearing officer may be made to state or federal court by either party in accordance with the provisions of Section 4-183, Connecticut General Statutes, and Title 20, United States Code 1415(i)(2)(A).



Hearing Officer Signature

Justino Rosado
Hearing Officer Name in Print